

2

CHIPMAN'S
PRINCIPLES OF GOVERNMENT.

PRINCIPLES OF GOVERNMENT



8007. a 8
S K E T C H E S

OF THE

PRINCIPLES OF GOVERNMENT;

By NATHANIEL CHIPMAN,

JUDGE OF THE COURT OF THE UNITED STATES,
FOR THE DISTRICT OF VERMONT.

R U T L A N D :

FROM THE PRESS OF J. LYON :

PRINTED FOR THE AUTHOR :

JUNE, M,DCC,XCIII.

2 K E T C H E S

P R E F A C E

FROM the time of Plato and Aristotle, to the present, the subject of Government has employed the pens of some of the first philosophers of every age. Much is due to the labors of those ages, especially to some of the Moderns. It is not surprising that the science of Government was not confined in one of the sciences of antiquity, but that it should have been the subject of modern research.

[Published agreeably to Act of Congress.]



I have endeavored in this volume to present a new and original system of political economy, and to show the principles, and to point out the means of improving the condition of the people. I have endeavored to show the principles, and to point out the means of improving the condition of the people. I have endeavored to show the principles, and to point out the means of improving the condition of the people.

P R E F A C E.

FROM the time of Plato and Aristotle, to the present, the subject of government has employed the pens of some of the first philosophers of every age. Much is due to the labors of those sages, especially to some of the Moderns. They have taught the world, that the science of government does not consist in an assumption of principles, merely arbitrary, or in the reveries of metaphysics. And yet, I do not know, that any writer, ancient or modern, has attempted to analyze the social nature of man, and from the relations, thence resulting, to derive the principles, which ought to be pursued in civil institutions. It will, I believe, however, be readily perceived, that this is the only certain ground of investigation, the only mode, in which any general, consistent, practicable principles in the science of government can be established. This mode of investigation has been attempted in the following sketches. How far I have succeeded, how far I have been able to discover any new principles, or more clearly to illustrate such as had been already discovered, I submit to the candor of the public.

I have endeavored at the investigation of natural principles, and to pursue truth wherever it led, uninfluenced by the weight of authority on the one hand, or a spirit of opposition on the other. I have several times, in the course of the following work, been induced to differ from the opinions of some writers of the first abilities and reputation. Though I have examined these opinions with the freedom of philosophical discussion, I have all along aimed to treat the writers with that decent respect, which they merit from every lover of science.

The title will advertise the reader, that he is not to expect in this little work, a system compleated and illustrated in all its parts. I have attempted only SKETCHES of the PRINCIPLES of GOVERNMENT. I have chosen this title, as most expressive of the limits of the design, as well as of the manner of execution.

Rutland, June 25, 1793.

P R E F A C E

ERRATA.

The following errors were occasioned, principally, by the avocations of the Author, while some of the sheets were at press, which rendered it impossible for him to inspect the proof. It is hoped the reader will pardon and correct them.

Page	Line from	for	read
15	5 top	before society,	insert civil.
57	17 top	fictitious	factitious.
58	10 bottom	consequential	consequent.
60	11 top	Indathyrfees	Indathyrfus.
60	15 top	the Prince	thee, Prince, &c.
61	2 note	eele, r. celle. L. 3,	for euse, r. euz.
63	2 top	Cressop	Cresap
64	2 top	his	their
69	7 top	condusion	conclusion.
70 & 73		Beccari	Beccaria
78	6 bottom	assented	asserted.
140	11 bottom, after	house	of
146	15 top	interest	interests.
154	6 top	dele against.	
154	11 bottom, after	appear, add, to be the case.	
155	12 bottom	According	In addition to.
156	9 top	constituent	constitutional.
161	6 bot.	decision	decisions.
165	1 top, and in note,	for amicable, r.	amiable.
165	4 & 6 top,	unamicable	unamiable
166	8 top, after trial,	add in.	
166	7 bot. text,	interest	interests.
190	3 top	are	is.
212	2 bot. in some copies,	f. causes r. cases, & dele in cases.	
237	9 top, after only,	add systematic.	
240	15 top	example	examples,

CONTENTS.

SKETCH I. INTRODUCTORY.	Page 13
SEC. I. The subject proposed.	13
SEC. II. Of the sense in which, principle, and principles of government, are used in the following sketches,	16

SKETCH II. OF MAN, AS FORMED FOR THE SOCIAL STATE. 22

SEC. I. Of the first rude state— Whether this is, to MAN, the scene of virtue and happiness, in preference to a state of improvement,	22
SEC. II. Of the appetite for society.— The hoarding appetite.—The appetite which leads to the propagation of the species.—Ambition.—Sympathy,	33
SEC. III. Of hatred and revenge.— Of envy, malice, and some other dissocial passions,	41

SKETCH

SKETCH III.

OF MAN, AS FITTED FOR CIVIL GOVERNMENT, AND THE NATURE OF THAT NECESSITY BY WHICH HE IS LED TO ITS ADOPTION, 51

SEC. I. Of the moral sense.—Active and passive powers.—Sense of accountability.—The social sense,—and patriotism,—as they relate to civil society, 51

SEC. II. Of a sense of property, 64

SEC. III. Of the coincidence between natural and civil liberty, 70

SEC. IV. Considerations on a disposition in Man, to abuse the powers of government, with which he is entrusted, 78

SEC. V. Of the necessity of civil laws and government, 91

SKETCH IV.

OF THE CONSTITUTION AND ORGANIZATION OF GOVERNMENT, 98

SEC. I. Different degrees of improvement, introduce different forms of government.—A source of false reasoning.—Brief view of the rights of Man.—An inaccuracy of Mr. PAINE, in treating of this subject, 98

CONTENTS.

x

	Page
SEC. II. Few governments formed by an actual compact.—Instability of ancient governments.—Social compact, in the formation of legitimate government.—Civil powers.—Division and limitation,	113
SEC. III. Of a balance constituted by an opposition of powers.—LOCKE'S constitution of Carolina.—Of other checks,	127
SEC. IV. Of the election of members of the legislature.—Qualifications of electors, and candidates.—Accountability of the legislature.—How secured,	142
SEC. V. Of the appointment and accountability of the executive and judiciary,	153
SEC. VI. Of juries,	163

SKETCH V.

OF EQUALITY,

SEC. I. In what sense men are born equal—And in what sense they are said to have equal rights,	172
SEC. II. Of the nature of equality in republics,	177
SEC. III. Of the right and equality of descents,	182

SKETCH

SKETCH VI.

OF THE RIGHTS OF PUNISHMENT, AND
TAXATION, 190

SEC. I. Of the right of punishment, 190

SEC. II. Of the right of taxation, 202

SKETCH VII.

OF THE MORAL OBLIGATION OF CIVIL
LAWS, 216

SEC. I. Judge *Blackstone's* opinion
examined.—Civil laws are binding
on conscience, when they accord
with the principles of a free govern-
ment, and the present state of social
improvements, 216

SEC. II. Different modes, in which
obligation is sometimes discovered—
have concurred to introduce a dis-
tinction between moral and civil
obligation, 227

SEC. III. That punishments will have
little effect in the prevention of
crimes, unless the laws are so calcu-
lated, that civil and moral obliga-
tion coincide, 230

SEC. IV. Of principles of govern-
ment, as they affect the moral obli-
gation of laws.—Their difference in
this respect.—The British govern-
ment.—The government of the
United States, 233

CONTENTS.

xii

Page

SKETCH VIII.

OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA, 239

SEC. I. Political situation of the States, previous to the establishment of the present federal government, 239

SEC. II. Difficulties in forming an efficient federal government.—Summary view of the two principal forms, which have heretofore been adopted, that of ancient Greece, and the United Provinces of the Netherlands, with their defects.—A concise view of the present federal government of the United States of America, 248

SEC. III. Organization and powers of the federal government.—Limitation of its powers.—Principles of accountability.—Brief view of its effects in practice, 256

SEC. IV. Observations on the tendency in government to a corruption of its principles, degeneracy, and dissolution.—Plan of reformation incorporated in the federal government.—Probable effect in perpetuating the government, 281

S K E T C H I.

INTRODUCTORY.

S E C T I O N I.

The Subject proposed.

A THEORY has been adopted, by some European Philosophers,* of no small note, that the first rude state of society, which, among civilized nations, is usually denominated the savage state, is the only natural state of man; that, in this state alone, he is capable of attaining the achme of perfection in virtue and happiness. They have supposed, that, what are generally called social improvements, serve only to deprave, and either inevitably generate a wicked disposition in man, or, at least, invigorate an original propensity to vice, which lay dormant, in what they so emphatically stile, the state of nature. They have further supposed, that from this wicked disposition, thus become predominant, and from various clashing interests, unknown in the state of nature, arises a war of all against all; that civil laws and government are an invention of man, to restrain these evils. Hence they derive the necessity of government, ultimately, from the original or adventitious wickedness of men.

B

Others

* Rousseau and others.—The Abbe Raynal favors this opinion.

Others have espoused an opinion, that true virtue, genuine benevolence, in man, would, in every stage of society, supersede the necessity of municipal laws, and civil subordination. With the former, they hold, that wickedness, alone, has imposed the necessity of civil governments. Both appear to imagine, that civil polity is not to be derived from the nature of man; but that it is a system of rules, contrived to meet his wicked disposition, and to restrain the violence of individuals, by the violence of laws. According to them, it was not so much designed, by the author of our nature, to lead men to happiness, in society, as to prevent the misery, which they are ever ready to inflict on each other; in short, that man has a necessity for civil government, but not an adaptation of his nature to that state.

Somopolitical writers, of great eminence,* have admitted, that man was originally designed for civil government, and that he is under a certain necessity of nature to adopt it. At the same time, they have maintained, that on entering into civil society, he, of necessity, gives up a certain share of his natural liberty, of his natural rights. By these expressions of natural liberty, and natural rights, are to be understood

* Locke, Beccaria, and many others.

stood that liberty, and those rights, to which man is entitled by the laws of his nature, as constituted by the Author of his being. This implies, that man, by the laws of his nature, is but partially fitted for society. Impelled, however, to adopt that state, from a necessity, which is admitted to arise from some part of his nature, he sacrifices a part of his natural rights, to secure the remainder, and even to acquire those, to which, by the laws of his nature, he was not originally entitled.

I propose, in the following SKETCHES, to enquire, How far MAN, by the laws of his nature, is fitted for society and civil government---Whether his happiness does not require social improvement, and laws, which are the result of his whole nature, lead to civil government---Or whether he is compelled to adopt the latter, by a single, and that a vicious principle in his nature, in opposition to others---Whether, considered as a physical and moral being, the laws of his nature have indulged him any liberty, which he may not enjoy under civil laws and government.

The principal view in these enquiries, will be to endeavor to find the leading Principles of Government, in the laws of social nature, and to trace them into exercise, in the establishment of civil institutions.

In the United States of America, political opinions, though considered as merely theoretical, cannot be wholly inconsequential. In these States, government is, professedly, founded in the rights of man. It derives all its energy in the prevention of evil, all its efficacy in the production of happiness, from the sentiments of the people. The opinions entertained of government, of the necessity of laws, of the end to be attained by them, and the means of attaining that end, will have an influence on the sentiments of the people, and the reasonings of the legislator. They will, in some measure, form the features of the government, and give a complexion to its laws.

S E C T I O N II.

Of the sense in which, Principle, and Principles of Government, are used in the following Sketches.

BEFORE I proceed to the subject proposed, I shall take the liberty to premise a few observations on the use of these terms, as they occur frequently in the following work.-----From Montesquieu, the term *principles*, when applied to government, has
been

been used in a more appropriate sense, than in other sciences. In other sciences, it always signifies something fundamental, some leading rule, law, or maxim. Thus we speak of the principles, on which any thing is constructed, as a watch. The term *principles* here, comprehends, not only the laws of mechanics, but those rules, by which the relative proportions of the several parts are determined, to direct the motions to a certain end. These are properly called the principles of construction.

There are also rules, by which the moving force is applied, and made to operate on the machine, with a view to the end proposed. These we call the principles of operation.

The term is frequently used to signify a mere passive power; that power, by which a subject is fitted to exhibit, in consequence of the operation of particular agents upon it, certain effects, agreeably to certain laws. Thus we speak of the principle of fluidity, the inflammable principle, the principle of malleability; and thus we say of man, that the principles of society and government are implanted in his nature; by which we mean, that he is fitted for that state, or, at least, that his nature requires it.

In the science of government, there are the principles of construction, by which

government is constituted and organized---the operative principles, by which its activity and efficiency are produced and directed---the passive principles---or the passive powers of man, to which the operative principles are adapted, to produce the end intended, obedience to the laws. The operative and passive principles, in any government, are determined by the constructive principles employed, or the nature of the constitution. They will, therefore, be different, according to the different constitutions of government. These, which I have called the operative and passive principles, Montesquieu, with a view chiefly to the latter, has, by way of eminence, called the principles of government. He seems to be too fond of simplifying, in this instance.

The principles of a government are not capable of being perfectly simplified, much less of being reduced to a single principle. Far from it, they are often very complex, and subject to a great variety of modifications, from the admission of different, and sometimes opposite principles. They retain, however, in each kind of government, their general and predominant characteristics. The same may be said of all the principles of government, as well as those of Montesquieu. He has defined the principles

ciples of government to be the human passions, which set it in motion. It would, perhaps, have been more accurate to have said, that the human passions are the passive powers of man, by which he is prepared to be operated upon, and to be put in motion to various ends, and in various modes, according to the choice, application, and direction of the means, or of the operative principles.

He has introduced three different principles, which he tells us are peculiar to the three principal forms of government ; the Despotic, Monarchical, and Republican. Fear, he tells us, is the principle of a despotic government. This, in his sense of the-term, is undoubtedly just. The instruments of despotism, are a military force at the beck of the Sovereign, which, by the terror of punishments, or rather of vengeance, secures obedience to his mandates. Inveterate habits of superstition, frequently, come in aid of the military force, and clothe the messenger of the Prince with the power of armies.

Fear is that passion of human nature, to which the measures of this government are, principally, addressed, and without which the despot could procure obedience, only by the constant and present application of force, in each particular case.

Honor,

Honor, he tells us, is the principle of a monarchy. This, taken in his own sense, is very deficient. That passion of emulation, a desire of excellence, which is natural to man, and which, by cultivation, is capable of an infinity of directions, good and evil, is, with the higher orders in monarchy, modified into what is called the principle of honor. But its direct effect in securing obedience to the sovereign, is confined, principally, to those orders. The multitude are under a complicated despotism. The nobles, in conjunction with the military order, are the instruments employed to awe the people to obedience. Religion, transformed into a gloomy superstition, is, usually, employed to the same end.

The principle of a Republic, or rather a Democratic Republic, he calls virtue.---- We are liable to be misled by the use of this term, in a sense so different from that, in which it is commonly received. He defines it to be a mere sensation, a faculty of the mind, a love of the laws and our country. In analogy to his other principles, I have ventured to call it a sentiment of attachment to the community, its constitution and laws. I will not take upon me to say, that this is altogether just, or that it is sufficiently comprehensive. It

is,

is, however, just to the principal purpose, for which it is intended. In a democratic republic, the law is, or ought to be, an expression of the will of the society, being the aggregate of the individual wills. Now, if the will of the aggregate coincide precisely, in all cases, with each individual will, an observance of the law must be as necessary as the power of willing. But this, perhaps, can, in no instance, be the case. The will of the whole, that is the law, is the result of mutual concessions, a compromise of the individual wills. Hence a necessity, not only of a general approbation of the result, but an attachment to the general good of the community, as constituted under government and laws, to secure the obedience of each individual member. In this kind of government, no force can be applied, in the execution of the laws, but what depends on this principle. It certainly is no more entitled to be called virtue, than any of the social passions common to man; but it has this preeminence over the other principles mentioned above, that it is, when rightly informed, perfectly in harmony with all the moral and social virtues, and is best promoted by them.

In the following Sketches, the term *Principle*, and *Principles of Government*, is sometimes used in the appropriate sense of
of

of Montesquieu, as above explained ; but more frequently in the same sense, in which it is used in other sciences.

S K E T C H II.

OF MAN, AS FORMED FOR THE SOCIAL STATE.

S E C T I O N I.

Of the first rude state—Whether this is to MAN the scene of virtue and happiness, in preference to a state of improvement.

THAT the savage state is a state of nature to man, cannot, with truth, be denied. There is not, at this day, a people on earth, who may not trace their origin to a race of savages ; some, indeed, more, and some less rude. The Jews, as the writings of Moses and their subsequent historians prove, are far from being an exception. The question is not, whether a rude, unpolished state, be ever a natural state to man ; but whether, in the original constitution of his nature, he is so formed for happiness in this state, as to exclude any general benefit to be derived from progressive improvement. We are at a loss
at

at what period, in the progress of society, to fix the precise state of nature which is intended. Shall we go back to the rude state of the inhabitants of New-Holland, who have learnt to draw no part of their subsistence from the earth, by cultivation? Or shall we chuse the still more rude state of the inhabitants of Terra-del-Fugo, whose sole dependence for food is on the shell fish found in the sands, at the ebb of the tide? Neither of whom have any notion of honesty, or the rights of property, beyond the circle of their several tribes.---Shall we make a little farther advance, and place it among the savages of North-America? They are simple, they are honest, as far as the circle of their several tribes. They take their food from the river or the forest, furnished by the hand of nature. The little deficiencies are supplied from the cultivation of the earth. The skins of the chase furnish them with coarse, but comfortable clothes, or are exchanged for the product of European looms. They are not goaded by ambition, to attempt the acquisition of power, which, when acquired, has generally proved the scourge of the human race. They are content, or resigned to the present, and are little anxious about the future. All this is true of the North-American natives, and yet it gives us hardly

ly a glimpse of their character. The savages of America, like other men, have their predominant passions. They esteem war and hunting almost the only pursuits worthy of a man. Address in these, constitutes their highest point of honor. Every other labor of life is relegated to their women, who are little better than slaves. Hence they derive an excessive ferocity of manners. Their resentment is keen, and revenge their most darling gratification. This arises from their state of society, in which every man is left to judge in his own cause, and to avenge his own wrongs. As they never forget a favor, so they never forgive an injury.

Among their different tribes, the injuries of an individual are resented as national. The possession of a hunting ground is, to them, the possession of an empire. These are sources of frequent wars, waged with the most savage ferocity. The butchering and scalping of old men, women, and children, the torturing and burning of prisoners, in cold blood, with the most shocking circumstances of cruelty, are among their pastimes. These are not secret acts of violence. They are by none considered as wrong. They are public transactions, performed, under what is, to them, the law of nations.

As

As they are not anxious about the future, they are, for the same reason, almost wholly improvident. When not engaged in their favorite pursuits of war, or hunting, they are too indolent to think of making an adequate provision against the inclemency of the season, or, indeed, against any future want. As they have fewer vices, so they have fewer virtues than more civilized nations; and both are more prominent, more distinctly marked. This arises from the paucity of the objects, with which they are conversant. With them, numerous passions, correcting and restraining each other, are not, as in a state of civilization, equally excited by a multiplicity of objects. When any object rouses their attention, the whole force of the mind, the whole vigor of the soul, is collected, and exerted upon one point.

Hospitality is a virtue, almost peculiar to a savage people, and the finest trait in their character. When we contemplate this virtue, among such a people, it strikes the mind with all the advantage of vivid sentiment, singularity of impression, and contrast of manners. Every recollection is accompanied with an enthusiastic admiration, that makes us regret the loss of those manners, which were alone capable of this sublime virtue. Will it still be

thought strange to assert, that this virtue derives its origin, and takes its principal lustre from the barbarous manners of the age? And yet so is the fact. It does not, however, consist with the rudest state of society and of manners. Some advance in civilization, some progress in the arts of life, is necessary to give a relish for hospitality, and to supply the means of indulging it. Among a people in the hunter state, it makes but little figure. Depending upon the fortune of the chase, or the gleanings of the forest, they find but a scanty, and precarious subsistence. With neither the foresight, nor the means, of making a secure provision for the future, they are frequently in want of necessary sustenance. Among such a people, the pressing demands of nature leave little of their scanty stores for the uses of hospitality. They have little curiosity, and no conception of any knowledge, which can be of use, beyond that of forming the bow, or some instrument of the chase. In this situation, what can, with them, compensate for an additional tax upon their already half famished appetites? The North-American natives have never been equally noted for the practice of this virtue, with the ancient Germans, or the more ancient inhabitants of Greece. They draw but a small

small share of their subsistence from the earth. All the care of their tillage, consisting in that of maize, beans, and some few edible roots, is left to the women. The labor of these, spared from their attendance on the men in the chase, and other drudgeries of a domestic nature, without the assistance of domestic animals, and with such rude implements as they can either form or procure, must yield a very scanty supply, for one part of the year; the other is, for the most part, as scantily supplied, by the fortune of the chase. They appear to have little relish for any new arts of life, unless they have some relation to their principal occupations of war and hunting; and very little curiosity for any information to be derived from an intercourse with strangers. Instances, however, are not wanting, in which they have discovered all that fidelity to their guests, all that warmth of attachment, which gives such a charm to the patriarchal times. Although the instances are less frequent, they bear the same genuine character of heroic integrity.

The shepherd state secures a more ready and abundant supply of food and domestic conveniences. Men more at ease, conversation begins to acquire a charm. More arts become necessary. The useful, and convenient engage the attention. New

objects afford gratification to an awakened curiosity. Still they are generally divided into small tribes. Their domestic manners are sincere, but rough. To foreigners they are fierce, cruel, and faithless. So universal is the state of war among such a people, that in almost every language, the same word, originally, signified both foreigner and enemy. Disputed boundaries are often the occasion of wars. They are often waged to avenge a private quarrel. To surprise and plunder the neighboring tribes of their herds, is the principal object of their hostile enterprises. Their whole history is a continued scene of war, pillage, and reprisal. So frequent were these predatory expeditions among the petty tribes of ancient Greece, that they were early honored with a particular appellation.* In such a state of society and of nations, the use of coin is unknown. Their whole commerce consists in an exchange of commodities in kind. These are, usually, bulky, and unfit to attend the person of the owner, to answer his occasions in travelling; nor could they attend him, with any degree of security, among a people, who reckon the plundering of foreigners a lawful mean of acquisition. Inns for the accom-

* *Βονλασία. Abactio bovum. Præda*—Taking cattle a prey.

accommodation of travellers are unknown. Were it not for the hospitality of individuals, there could be no passing from one country to another. There is something in the practice very congenial to the frank, rough, and generous manners of a rude people. Their generosity, however, in this favorite instance, rises, as it were, through a cloud. We find by Homer, that strangers, usually, applied to their intended hosts, in the posture of suppliants, and intreated the rights of hospitality, as for their lives. His instances may, indeed, be considered as poetic fictions; but they were, undoubtedly, relative to the manner of the age. To grant the rights of hospitality, was, to grant protection. The host, or patron, was considered as the protector of his guest. This office suited with a martial spirit. It gave the host consequence in his own estimation, and in the estimation of others. The practice of this virtue, among rude nations, affords not only a gratification to curiosity, but an opportunity of indulging in the exercise of humanity to a stranger, without incurring the imputation of a want of attachment to the tribe. The advantages are national and reciprocal. In no other way can they acquire a knowledge of foreign nations, their arts and manners. Like the safety of heralds, it passes into

their law of nations. In ancient writers, we frequently read of the rights of hospitality, of the laws of hospitality, and of wars to avenge the violations of those rights. Indeed, it is rather to be considered as a national, than a private virtue. In the present state of improvement, among civilized nations, almost every reason, which concurred, among savages, to the establishment of hospitality, has ceased, and the practice has ceased of course. The arts of writing and printing have furnished almost innumerable vehicles of intelligence, always at command. Knowledge of all the arts of life is diffused, with facility, safety, and accuracy, as far as the use of letters is known. The cultivation of the gentle passions, an improved sense of the duties of humanity, a knowledge of its rights, and the protection afforded to those rights by the law of nations, and by the civil laws of most countries, have superseded the necessity of individual protection. Public accommodations have become much more convenient for travellers, than private hospitality. The universal introduction and currency of money, has given men the command of a kind of property, which may, with ease and safety, attend their persons, and provide for them, in all their peregrinations.

Most

Most men who travel, at this day, are engaged in pursuits of interest, or gratifications of a private nature. In this state of things, hospitality, in the ancient practice, would be unnecessary, unjust, and intolerably burdensome. And why should we regret its loss? Let those who entertain such an enthusiastic veneration for hospitality, and other ancient virtues of the same origin, reflect, that they cannot have the effect without the cause; and that those precious gems of savage virtue would lose their lustre and estimation, without the foil of savage vices.

This short sketch is sufficient to prove, that the first rude state of man, or, if we chuse the expression, the first simple state of society, does not most abound in virtue and happiness. I have given, indeed, a short, but, I believe, a true sketch of every equally uncivilized tribe on earth. Shall I be forgiven the censure, if I say, this opinion of a preference of the savage to a civilized state of society, has been propagated, by the glowing pens of some writers, whose love of virtue exceeded their information? Had they attended to the science of human nature, the developement of the human mind, the powers, faculties, passions, and appetites of man; had they studied, attentively, the history, not of battles
and

and sieges only, the intrigues of statesmen, and the revolutions of empires ; but the history of man in society, the natural history of the human mind, they would have found reason for correcting their opinion.

This science, so important to man, has, till very lately, been hardly attempted by any writer. In the first ages of society, none are capable of making or recording proper observations. One half of the progress has, generally, passed unnoticed. In following ages, historians, hurried away by the more splendid events of history, have mostly neglected those facts, which serve to mark the progressive improvement of the mind ; and readers have been, equally, inattentive to the few, which have been recorded. In America, the best opportunity, which ever presented, for supplying these deficiencies, by observations on real life and manners, has been suffered to escape, with very little improvement.

SECTION II.

Of the appetite for society—The boarding appetite—The appetite which leads to the propagation of the species—Ambition—Sympathy.

WE will now briefly enquire, how far man, without any consideration of mutual wants, or a necessity of mutual defence, arising from a sense of weakness, or wickedness, is fitted for society. That surely is his natural state, to which the laws of his nature, general and particular, all tend. Here let me premise, that with man, a state of improvement is not opposed to a state of nature. Perhaps as good a definition as any, which has been given of man, in this view, is, that he is a being capable of improvement, in a progression, of which he knows not the limits. Deity has implanted, in his nature, the seeds of improvement, furnished him with powers and faculties for the cultivation, and to these, superadded a sense, that the cultivation is a duty.

The first thing which strikes the mind, in the course of our enquiry, is an appetite for society. Man desires to associate with man, and feels a pleasure at the approach of his kind. The appetite is so universally preva-

prevalent, that it can not well be denied to be the work of nature. The same appetite, under the name of instinct, produces all those associations, which are found to prevail among all gregarious animals of the brute creation. With them, it is allowed to be natural. Why not allow it to be so with man, to whom it is so much more extensively necessary and useful?

It has been made a question, whether the social appetite be limited, in the number of its objects? I think this question will admit, though not of a precise, yet of a satisfactory answer. It is adapted to the occasions, the powers and faculties of man, and admits of an equal extension by improvement: Accordingly, in the early and unimproved stages of society, while the powers and faculties of the human mind were in their infancy, we have every where seen men associating in small, independent tribes. If at any time, larger associations have been formed, in that state, like some of the great empires of antiquity, they were not the effect of choice, but of superior force. Agreeably to this opinion, we find, that the parts were very loosely connected, and every where crumbled in pieces, as soon as that force was removed.

As mankind increase in knowledge, as their powers and faculties are extended,
and

and the comprehension of the mind enlarged, they, voluntarily, extend their associations. To determine, therefore, the limits of the social appetite, we must determine the limits of social improvements.

This appetite is accompanied with other appetites, with passions and instincts, which have no use, no gratification, no object, but in society. Hardly can we find one, which terminates wholly in self, not one, which stands opposed to society. Of compassion, sympathy, and all the train of benevolent passions and emotions, society is, clearly, the ultimate object. Others tend to the preservation of the species, or of the individuals. Such is the hoarding appetite, and the passion for riches, to which it gives rise; the appetite, which leads to the propagation of the species, and its consequent passions—even these are not solitary. They do not terminate, wholly, in self.—No, not the hoarding appetite, which, if any, might be thought an exception. Here self often predominates; but in general, the passion for riches, stript of every view to society, becomes very faint, if not totally extinct.

The man who is intent upon gain, has some connection, some friend, whom he wishes to benefit by his acquisitions. He views the acquisition of riches as a mean,
not

not an end ; a mean of future support and personal indulgence, it is true ; but, at the same time, a mean of benefiting some, and of acquiring esteem, confidence, and influence among all. Some instances have indeed been known of solitary misers, who have made the amassing of riches the sole end of their pursuits. Some individuals have, likewise, conceived an aversion to man, and have secluded themselves from society. These are considered as deviating from the common sense of their species, the common standard of man. They are instances of the abuse of natural passions ; or they are anomalies of the race. There are other anomalies ; but from such we do not take the common nature of man.

The appetite, which leads to the propagation of the species, is, perhaps, in its origin, a vague, indeterminate impulse to gratification. The principal end of this appetite, doubtless, is the continuation of the species, by a perpetual re-production. In this view it is the constant revivifying principle of society ; but the author of our being, whose all-comprehensive plan is adjusted, in the most perfect harmony, has made it further subservient to the purposes of social happiness. Nature, by making it the source of a specific passion, accompanied with sentiments of delicacy and tender-

ness, corrects the vagueness of the appetite. This forms one of the strongest bonds of society, and gives the most enchanting softness to the *tout ensemble*.

Ambition, when in balance with other passions and appetites, is far from being opposed to society. Far from being detrimental, it is highly useful to man. By this passion, many actions, the noblest and most beneficial to society, are produced. It is only in the extreme, that the passion becomes hurtful; when the acquisition of power or influence is no longer considered as a mean of doing good; when the passion aims, solely, or principally at its own gratification. But this is doing violence to the laws of nature, which result from the whole nature of man. It is a sacrifice of one part of his nature to another.

The passions of hatred, revenge, and some other passions, and emotions, the effects of which, are, not unfrequently, very pernicious in society, will be reserved for another section. In the remainder of this section, we will attend to some emotions, purely of a social tendency.

Sympathy is an ingredient in the social nature of man, deserving of very particular attention. The *modus agendi*, or how the emotion of sympathy is produced; whether it be wholly mental; the reflection of a

sentiment ; or whether it be partly organical, partly mental, is, perhaps, one of the secrets of nature ; but the effect is evident, and the final cause illustrious. It is one of those nice adjustments in the nature of man, which give us the most exalted idea of the wisdom and benevolence of its author. In the smaller circles of life, its influence is more immediate, more direct ; but its influence extends to whole nations and empires.— Sympathy is produced thro' the medium of an organic impression. We perceive something in the countenance, the movement, the whole figure of the person, which we take for the expression of a sentiment, or a particular state of mind in that person. We instantaneously, seemingly by a direct impression, without time for reflection, find excited in ourselves a corresponding tone of mind, corresponding sentiments, producing similar expressions. The emotion, though we have a sense of pain and distress in the object, is not repulsive. On the contrary, we feel a powerful attraction to objects of distress. Thus man is sweetly prepared, by nature, to mourn with those who mourn, and rejoice with those who rejoice. The emotion of sympathy, not only prevents a thousand discords, but produces, in society, a kind of instinctive harmony.

There

There is another impression of sympathy, which seems to be mostly organic, or an effect on the nerves only. One person yawning in company, will produce a spontaneous yawn in all present, at least, in all who see him in the act. When we see a person suddenly hurt, or hear of one being wounded in any particular part, or of the amputation of a limb, we feel a particular affection of the nerves in that part, which thence thrills through the whole frame, conveying, at once, to the heart, a sense of the pains supposed to be endured by the patient. This may be a reason, why, when we hear of a person being wounded, we are anxious to learn the manner, and particular place of the wound. While our information is general, the affection is general. We endure something like a state of suspense. This is a fitation of, apparently, greater uneasiness, than when the sensation is reduced to the corresponding part.

Lord Kaimes has beautifully unfolded the sympathetic emotion of virtue,* but it ought not to be omitted here. When we are witnesses, or hear of the performance of any great, noble, and benevolent action, we find, excited in ourselves, a strong disposition to perform the same kind of action. The mind swells with an ardent desire to

D 2

find :

* Elements of Criticism, v. 1. ch. ii. p. 1. sec. 4.

find a proper opportunity, or a proper object.

These emotions of sympathy, are not the effect of reasoning: they rather resemble instinctive impulses. Sympathy, without the intervention of words, blends the thoughts, the sentiments, and even the virtuous disposition of individuals. It diffuses joys of the heart, from countenance to countenance, commands relief in distress, and consolation in affliction. Montesquieu alludes to this principle in human nature, when he observes, that, "people are, generally, able to communicate their ideas to their children; but they are still better able to transmit their passions." This disposition to sympathy well accounts for all that similarity of sentiments, character, and even of features, which is observable in families, societies, and nations; the less perfect, indeed, the more extensive the connection.

SECTION III.

Of Hatred and Revenge—Of Envy, Malice, and some other dissocial Passions.

THE passions of Hatred and Revenge, are not, in their nature, opposed to society, though, from abuse, they become, at times, very pernicious. On a candid enquiry, it will be found, that those passions do not arise from any malignity in the nature of man. They are given for wise and good purposes. They are necessary to a being capable of right and wrong in his actions; capable of injuring as well as benefiting others, and liable to be, himself, the subject of injuries from those of his own species.

Men are intuitively conscious of a freedom of action, of a choice in what they do. We know, at the same time, that man is not a perfect being. He has many weaknesses. There fall in his way motives to action infinitely various. Sometimes his choice is influenced by ignorance, by error, by the prevalence of particular passions, or appetites, a present desire of gratification. Sometimes, he is confounded with an intricate combination of circumstances, the result of which, he wants the power, or the patience to evolve. He is frequently tempted to a deviation from justice, by an

opposition of interests, originating, not in a direct intention of the parties, but the want of an early foresight in each of the other's intended pursuits. To a being thus circumstanced, powerful moral restraints are necessary. Such restraints are provided for man, which come in aid of the moral sense, and are made to arise from the consequence of his actions. It is evidently a constitution of Providence, that *vice* shall produce *misery*, to the agent, and that *virtue* shall produce *happiness*, as a consequence, connected in both, by the relation of cause and effect. The passions of hatred and revenge will be found to accord with this constitution.

The more fully to investigate this subject, it will be necessary to take a nearer view of human nature. Man, in an unimproved state, is very little acquainted with the operations of his own mind, the extent of his powers and faculties, and the result of their various combinations. For their development, he is furnished with senses, internal and external, accompanied with the powers of reason and investigation. It is here, as in physics, no reliance can be had on reasonings, *a priori*. Experience alone can decide. Man, therefore, fully to discover the direction and extent of his powers and faculties, and the right tendency of his whole

whole nature, must, with sufficient attention and presence of mind, to mark the result, pass through such a variety of situations, as will bring all into exercise, and put all to the test, in every variety of combination. It is a matter of great difficulty, to make just and accurate observations on a subject, so evanescent, as are the operations of the mind, and always *in transitu*. They are past, ere there is time for reflection. On the most important occasions, the whole mind is wrapped in attention to some external object. Add to this, subjected as man is, though for wise purposes, to the influence of habit, his observations will be, frequently, partial, and his conclusions warped by some present prevailing bias. It is evident, therefore, that, farther than the direct perception of the moral sense, in its most simple state, the progress of knowledge, in moral and social combinations, will be slow; how slow, a slight attention to the history of the human mind, will evince. We are taught, by reason and experience, that the less man is able to discern agreements and tendencies, the more liable he is to do wrong; the more liable, from partial views, instead of seeking a compromise, to sacrifice to his own, the interest of others; at the same time he is less able to devise and enforce those social rules, which might remedy the evil. In

In the first rude stages of society, men have no idea of general rules, or public punishments, for the prevention of private injuries. They are unable to connect private injuries with the common concerns of the nation. The redress and prevention of these, are left to the care of each individual. In a situation like this, hatred and revenge are the only possible external checks. These passions go to the nature of each individual. Hatred is a rooted aversion of one man to another, on account of a real, or supposed, fixed and intentional opposition to his interest, or happiness. Revenge, is a desire in one person, to inflict an evil on another, for a real, or supposed injury received. Hatred dictates the avoidance of its object, as disagreeable or noxious. Revenge pursues its object, and is gratified, only with retaliating the injury. Such conduct is dictated by the law of self-preservation, and is the more necessary, as there is no other external restraint, no other mean of escaping, or preventing future injuries. Thus limited and directed, they are both necessary for the prevention of a licentiousness in injuries, unrestrained by any fear of the consequences.

In the progress of improvement, an extension of social intercourse, the invention of arts, the change of manners, the separation

tion of property, the multiplication of desires, and objects of gratification, form a scene too intricate, a combination of interests too complicated for the former simple mode of society. Liability to injuries is increased in proportion. The passion of revenge, almost constantly in exercise, would, in this state, if laid under no restraint, become a most cruel scourge. Nature is always equal to her occasions. Active enterprise, and extensive pursuits, invigorate and enlarge the powers of the mind, and render men equal to the task of a more extensive legislation. They are led, by degrees, in some measure, to comprehend their situation; to evolve the combination of their various interests; to form those laws, which may have a tendency to prevent a direct opposition; to provide a reparation for injuries, and punishments for the restraint of wanton violence. Still, the progress is slow. It is long before men can be persuaded to accept only a reparation for injuries, and submit to society, the sole right of punishing for prevention, which comes in the place of revenge.

The right to revenge private injuries, in the most improved state of society, in the highest refinement of manners, never wholly ceases. Nor is it demanded.—

There will exist many little oppositions,
many

many little injuries, to which the law cannot descend, and which, if neglected, become the source of greater violences. The exercise of hatred and revenge, by the party injured, is still the only restraint, in these cases. In a state of refinement, however, these passions are stript of their violence. An avoidance in company, a look of contempt, a silent glance of indignation, may prove a sufficient restraint to a person, at all susceptible of the nicer feelings. In this state, they are hardly known for the same passions. Still, they are the same, only chastised and accommodated to a more improved state of society. Before, they acted a primary part, as sovereign in the distribution of punishments. Now they act a subordinate part, coming in aid of the law, in matters of smaller moment. They are, indeed, liable to great abuses; and what is exempt from abuse, in the hands of a fallible being? We should be but ill fitted for society, in any state, without them. In an improved and well regulated society, the abuse can never be very extensive, in its consequences. Let us not rashly attempt to correct the wisdom of Deity. Much better is it for us, that we suffer the abuse of them, than the total extinction.

Envy, malice, and avarice, have been accounted instances of natural passions, which

which are dissocial, and tend to prove, that man is little fitted for happiness in society. I will not contend about the term, *natural*. It is true, that man is capable of these passions, and of many other vicious passions and habits. A little reflection, however, will discover, that these are not original in his nature. They have their origin in the abuse of those natural passions, which are necessary to his happiness, both as a social being, and as an individual.

Envy is generally said to be Emulation carried to excess. This is undoubtedly true; but, in exercise, it certainly partakes of the passion of Revenge. Emulation is a desire to excel others, in the public estimation. The passion is not, directly, either social or dissocial, but is, in its consequences, frequently, very beneficial to society. While a person strives, by the acquisition of superior excellence, to deserve a preference, in the public opinion, it may be, emphatically, called the strife of virtue. The happiness of society is interested in the contest. When a person deserts the prime object, the acquisition of real excellence, and strives, by the depression of a competitor, to enjoy the public estimation unrivalled, it has degenerated into envy. It is now the contest of vice. A person, under the dominion of this passion, is prone
to

to exaggerate every little fault, in a competitor, and to convert, even his virtuous actions into vices, by attributing them to corrupt motives. Every excellence, in a rival, is viewed, as hostile; every advance, a personal injury. To complete the turpitude of the passion, and fill up the measure of vice, the passion of revenge is called in to its aid.

Malice is a disposition to inflict evil on others, without just cause. The disposition is inflamed into a passion, whenever a proper object is presented. It may be called a perpetual anger. It is equally irrational with that passion. Some persons appear to derive, from their organization, an irritability of mind, which easily admits this disposition. In general, malice prevails most among a people of fierce and rough manners, where the common tone of the mind borders upon anger. It is more rare in an improved state of society and manners, and where it is discovered, may, generally, be traced to its source, in a series of disappointments, insults, and hard usage, which have habituated the mind to a state of irritation. In all these cases, it is easily perceived, that a malicious disposition, is, originally, no part of the common nature of man. It is wholly adventitious. It is a vicious habit of mind admitted and confirmed

firmed, by a too easy indulgence of the irritable feelings.

Avarice is the excess of that passion, which accompanies the hoarding appetite, as mentioned, in a former section; the passion, which prompts man to provide for his future necessity, or conveniences. It is the foundation of all his providence. He could not even subsist without it. Like other passions, it is liable to abuse; to be converted into avarice, and become, indirectly, an incentive to the most horrid vices.

There are passions, which originate in habit. Every habit gives rise to an attendant passion, which impels to the indulgence of the habit. vicious habits are attended with vicious passions, many of which have the most pernicious consequences in society. Such passions have no pretence of being natural, or, original in the mind of man. The habits, from which they are derived, are formed in the mind, through the neglect, or abuse of some natural power, faculty, or propensity. They may, like every vice, be admitted or excluded, at the election of the mind. They may, therefore, with exact propriety, be denominated artificial.

That any of the passions, faculties, or propensities of man may be abused, proves only, that he is a moral agent, capable, in

his actions, of chusing between good and evil ; or that he is imperfect, and liable to deception, and sometimes aberrations from virtue, without designing the consequences. Wereit an objection to any passion, propensity, power, or faculty, that it might be abused to the injury of mankind, not one would escape condemnation. The faculty of reason would not be exempt. Generosity itself must be accounted an evil, because it sometimes mis-judges, and sometimes turns to prodigality.

Upon a candid view of the subject, I think we may fairly conclude, that man is, by the laws of his common nature, as constituted by the author of his being, fitted for a state of society, and of social improvements ; that his happiness depends on the right use of his passions, appetites, powers, and faculties, agreeably to the laws of social nature ; that, as a moral being, capable of vicious, as well as virtuous actions, he may deviate from his destination, violate the laws of his nature, and disturb his own happiness, and the happiness of society.

S K E T C H III.

OF MAN, AS FITTED FOR CIVIL GOVERNMENT, AND THE NATURE OF THAT NECESSITY BY WHICH HE IS LED TO ITS ADOPTION.

SECTION I.

Of the Moral Sense—Active and Passive Powers—Sense of Accountability—The Social Sense—and Patriotism—as they relate to Civil Society.

IN the preceding sketch we have seen that Man, as far as depends on his natural passions, appetites, and instinctive emotions, is fitted and intended for the social state. We shall now enquire how far he is, by his nature, fitted for government: for civil institutions and laws.

Man is furnished with a moral sense,* by which he perceives the right, and the

E 2

wrong

* By the Moral sense is not to be understood any thing like a moral instinct. It is used to express that mental faculty, by which we perceive moral relations, comprehending the feelings, which, in the mind, accompany the perception. The same may be said of the sense of accountability, and of all the internal senses. They are faculties of perceiving certain relations. They are called senses, from a supposed analogy to the external senses.

It

wrong of his actions. This sense is faint and limited at first; but is invigorated, and extended, in the course of social improvement. It is the final arbiter of justice, veracity, and all the moral virtues, of all the moral actions of the man, whether social, or selfish. When he perceives his actions to be right, or productive of good, agreeably to the order of his nature, he is conscious of a virtuous approbation; when he perceives them to be wrong, he suffers the painful emotion of disapprobation. Hence arises his love of justice, veracity, and all the social, all the moral virtues. What he is conscious of in himself, he expects to find in others. This is the foundation of his confidence in the justice of others, and his reliance on human testimony. That he sometimes violates those virtues, is no proof, that he does not love, and admire them. Justice, for instance, is the result of action, of moral action; or rather, it is the result of

It has been usual to consider them, as existing, distinctly, in the mind. But I think this is not just. The distinction, from which they have derived their different denominations, is, probably, to be found in the objects of perception only, not in the mind itself. Be that as it may, whether they exist, distinctly, in the mind, or are denominated from the different objects of perception, the distinction will be equally necessary, and the conclusion, to all the purposes of reasoning, precisely the same.

of certain reciprocal relations between the action, the agent, and the object. It is often, therefore, not a little complex. A little more, or less comprehension of these relations, may, wholly, vary the result, as to the moral quality of the action. Viewing things through the medium of prejudice, or of some predominant passion, or appetite, man is liable to err, as well in the association, as in the application; and while he loves virtue, in general, to admit vice in particulars.

Considered as to his mind, man has active as well as passive powers. He is capable of deliberation and choice. He is, likewise, capable of various impressions from external objects. These impressions introduce a change in the mind, which is the subject. A difference in the subject, gives a difference to the effects produced by the same cause. Hence it is, that, not only different men, but frequently the same man, at different times, may be very differently affected by the same object, and the same motive have a different influence. Hence comes a fluctuation of choice. This fluctuation is corrected by the moral sense, by the force of habit and of reason, which place a choice of objects, or the admission of the causes of such impressions, in the power of the mind. Were man unassaila-

ble by external impulses; were the influence of motives excluded, did his nature admit one line of conduct, only, without any modification, he would be, wholly, unaccommodating, a being wholly unaccountable. Laws might as well be promulgated to a machine. Sanctions and punishments could add no inducement to the observance. To an omniscient and all-perfect being, this might, perhaps, be a desirable state; but it is ill suited to the imperfections of man.

Thus, by a little attention, we discover, that the very constitution, which on a cursory view, seemed hardly to admit of government and laws, is nevertheless, well adapted to that state. It is no objection to say, man is imperfect; it is only to say, he is man. His imperfections, to a certain degree, fit him to be a subject of government. We shall see, hereafter, that they render it indispensibly necessary.

Man has, likewise, an appetite for the approbation of others, which contributes not a little to his sense of accountability. The sense of accountability is a very principal ingredient in the moral nature of man. When he has done well, he is conscious that he is deserving of approbation; when ill, of punishment. In the same manner, he judges of the actions of others.* Thus
he

* See more upon this subject in sec. 4 of this sketch.

he is made to perceive the justice of punishment, and the moral necessity of submitting to laws, which comport with his moral nature.

There is one sense, which I will venture to call the social sense. Though its effects have been often noticed, I do not recollect, that it has been distinctly handled by any writer on society. When a man considers himself, as connected with any society, he is, if I may use the expression, perceptively conscious of a kind of individuality of himself with the aggregate. The perception is more, or less distinct, as the connection is more, or less intimate. This sense, if it be not the germ of every social attachment, certainly, gives strength to the attachment, and vigor to patriotism itself. It is a very necessary part of the social nature of man, and of great importance to government. It is not only the soul of individuality to the whole government, but, as there will be numerous subordinate connections in the same government, it makes all the individuals of the same connection, in some measure sponsors for the actions of each. They perceptively enjoy the virtues, both of the individuals of the connection, and of the aggregate. Each feels, as of right, the reproach of the other's crimes, and the justice of their punishment. I think the existence
of

of the social sense will not be doubted by any, who will carefully attend to the operation of their own minds.

The perceptions of this sense have, indeed, given rise to a principle, which has been grossly abused to the oppression of mankind. In many governments, the horrid practice has prevailed of involving, in the punishment of offenders, all of the same family and connection, however remote. It has prevailed, mostly, in despotic states. It, there, coincides with the principles of the government, which make it a crime for a man to be placed, even by nature herself, in a situation, in which he might dare to think himself injured, by the actions of the Prince. The principle, by no means justifies the practice; but it, in some measure, accounts for its origin. It, likewise, accounts for the practice of retaliation, reprisals, and many other practices, adopted in the law of nations. And, here, humanity might vindicate her rights, and assert, that the practice is, too often, carried further than the principle will warrant.

Patriotism, or love of country, makes an illustrious figure in civil institutions. It is indispensibly necessary to any degree of security, or prosperity in a nation. The whole community is the object of this passion. In its effects, it unites the individual
mem-

members, in the pursuit of public measures, and on necessary occasions, gives a common preference of public to private good. To the common interest, in the defence and prosperity of the nation, it adds an affection, great as the object, on which it is exerted.

It has been made a question by some, whether this passion be among the natural passions of man. The Abbe Raynal has asserted the contrary. Speaking of the inhabitants of Brazil, he says, "They shew no particular attachment to their native place. The love of country, which is a ruling passion in civilized states; which, in good governments, rises to enthusiasm, and in bad ones, grows habitual; *this love of our country* is but a fictitious sentiment arising from society; but unknown in a state of nature."^{*} Let us carefully examine this opinion. At this day, facts, and not names, give a currency to opinions.

Though in speaking of the Brazillians, the Abbe mentions only their want of attachment to their native soil; yet, in his general position, he comprehends all the most distinctive properties of that love of country, which is, generally, denominated patriotism. In this sense, the love of country, is the love of the community. An attachment to the soil collects, limits, and fixes

* Hist. of the Indies.

fixes the passion, and gives a locality to its object; but is not necessary to its existence. Take from the country the community, all its inhabitants, the object ceases.

Were this passion not discovered, in the first rude state of society, no conclusive argument could, in this point, be drawn from that circumstance. Most, or all the passions of man, are, originally, capacities only. Capacities may, and do exist, antecedent to the objects, to which they are adapted. They can be discovered in exercise only, and they cannot be exhibited in exercise, until they meet a proper subject for their exertion. Many of them are like plants in the germ. They exhibit not their species, until they are expanded by a proper cultivation. Shall we say, the oak is not a tree of nature, because, in its first state, it is but a germ in the acorn? Shall we say, the appetite, which leads to the propagation of the species, and its consequential passions, are not natural, because they are not discovered in the infant of a day?

If we rely on facts, history has not recorded, or modern researches discovered, a single people, in this state of nature, a state, in which the love of country, an attachment to the community, does not make a conspicuous figure. The ancient barbarians of the north, from whom the modern inhabit-

ants

ants of Europe are, mostly, descended, furnish, every where, proofs of the existence of this passion ; of vigorous national attachments. It is true, that their attachment to the soil was not so strong. This attachment is fixed, principally, by the cultivation of the earth for subsistence, which collects the interest and attention to one spot, and gives a locality to conveniences.

It is not, however, true, that savages have, in general, but feeble attachments to the soil of their country. On the contrary, in this respect, they are, in a great measure, capable of the same habits, passions, and sentiments, as the man of civilization. They occupy, with their habitations, but a small part of what they call their country. The greater part is reserved for pasture, or for hunting ground. It is the great farm of the tribe. They readily remove from one part of this to another ; but war, famine, or some more powerful cause, is necessary to compel them to a total emigration.

The ancient Scythians, from whom the modern Tartars are descended, were a nation of herdsmen. Their riches consisted principally in horses, which supplied them with both food and carriage. Their habitations were booths, or tents of easy construction. In a country of great extent, they preferred only those places, which afforded the greatest
plenty

plenty of fresh pastures. In search of these, they made frequent and distant removals.

We find, that among this people, as early as the reign of Darius, the son of Hyftaspes, the love of country was a vigorous passion. Their national attachments were strong, and they were attached to the soil of their country, not so much because it afforded them subsistence by cultivation, as because it contained the tombs of their ancestors. According to Herodotus, Indathyrsees, who was a prince, or a head warrior in that country, sent the following message to Darius, then attempting the conquest of Scythia :—"If I fly before the Prince of the Persians, it is not because I fear thee. What I do now, I am used to do in times of peace. We Scythians have neither houses nor lands to defend, if thou hast a mind to force us to come to an engagement, come and attack the tombs of our fathers, and then thou shalt find what manner of men we are." Such a people could be no strangers to patriotism.

The savages of North-America are a living instance of the vigor of this passion among a rude, uncultivated people. The European writers have been greatly abused in their information concerning the American natives. Buffon has asserted, that, "Among them, paternal love, and filial affection

affection are very faint. The most intimate connection, that of family, has but feeble ties. There is no society between one family and another; of course there is no national union, no republic, no social state.”*

The Abbe Raynal, in his observations on America, has copied many things from Buffon, and probably, here, he found that state of nature, to which he alludes in the passage above recited. Happily, such a state of nature does not exist. In the same account of the inhabitants of Brazil, the Abbe speaks of their ancient mode of living, in that country. What but an attachment to the soil could have been the cause of the continuance of this people, in the same country, thro’ a succession of ages? to what but a national attachment shall we attribute their national manners, and the national resentment of which he there speaks?

In another place he gives an instance, which contradicts every part of the social character given of the American natives, by Buffon, and militates, strongly, against his

F

own

* — ils aiment foiblement leurs peres, & leurs enfans; la societe la plus, intime de toutes, cele de la meme famille, n’a donc chez euse que de foible liens; la societe d’une famille a l’autre n’en a point de tout: des lors nulle reunion, nulle republique, nulle etat social. xviii. 146.

own opinion, that in what he calls a state of nature, the love of country is unknown. The French wanted to persuade some of the savages of Canada to remove to a distance from their native soil. On this occasion, one of their Chiefs made the following speech: "We were born (said he) on this ground. Our fathers lie buried in it. Shall we say to the bones of our fathers, Arise, and come with us into a foreign land?" Is this the language of a people, who are almost void of parental and filial affection? who have no national attachments? no republic? no social state?

Logan, a Mingo Chief, in his speech,* sent to the Governor of Virginia, at the close of an Indian war, in the year 1774, discovers the same sentiments of patriotism. The reader will not be displeased to see the whole of this beautiful passage. It is equal to volumes on the character of that people. "I appeal to any white man," says he, "to say, if ever he came to Logan's cabin, hungry, and he gave him not meat; if he ever came cold and naked, and he clothed him not. During the course of the last, long, and bloody war, Logan remained idle in his cabin, an advocate for peace. Such was my love for the whites, that my countrymen pointed as they went, and said, *Logan is the friend of white men.* I had even

* Jefferson's Notes on Virginia. 67.

even thought to have lived with you, but for the injuries of one man. Col. Cressop, last spring, in cold blood, and unprovoked, murdered all the relations of Logan, not sparing even my women and children. There runs not a drop of my blood in the veins of any living creature. This called on me for revenge. I have fought. I have killed many. I have fully glutted my vengeance. *For my country, I rejoice at the beams of peace* :—But do not harbour a thought that mine is the joy of fear. Logan never felt fear. He would not turn on his heel to save his life. Who is there to mourn for Logan? Not one.”

Where shall we find the love of country more emphatically, more beautifully expressed? The people of the United States, who have had frequent occasion to transact business with the American natives, both as individuals, and in their national councils, know the strength of their national attachments.

The farther we go back, with men, towards the state, so fondly, and partially, deemed the only true state of nature, the more vigorous we find that passion, which attaches them to their little communities. What then is the result? Why, clearly, that the author of existence, to fit men for society

society and civil government, has strongly incorporated this passion in his nature.

S E C T I O N II.

OF A SENSE OF PROPERTY.*

THE rights of property make so great a figure in the laws of every government, it may not be amiss to give a little attention to man, in relation to those rights. Much has been said, by writers on law and government, concerning the origin of the right of property, and many enquiries have been made, whence man comes by the idea of that right, so universally prevalent. I have met with but one opinion, which can give any satisfaction on the subject. Lord Kaimes has employed several essays in its illustration.† The reader will readily discern, how far I am indebted to that excellent author, for some of the following observations.

It

* The reader will please to remember what was said in a note to the preceding section, concerning the internal senses, of which I reckon the sense of property one.

† Essays on Morality and Natural Religion. 66. Sketches of the History of Man. Book I. Sk. 3.

It is now, I believe pretty generally agreed, that man is furnished with internal, as well as external senses. The objects of the internal senses are, mostly, moral relations. Among these, is a sense of property; a sense, by which the mind perceives, intuitively, without the intervention of reasoning, a right of property. Whether it be a distinct sense, or a branch of the moral sense, is not material to enquire. This is to be observed, that the perception is only of relations, from which results the right of property. As a distinct sense, it does not extend to the modes of acquisition, but leaves them to the cognizance of the moral sense.

The relation, in which consists the right of property, seems not to be a moral relation, nor wholly a corporal relation, as of parts. The relation between me and the table, on which I write at present, by which it is mine, seems to have nothing of a moral quality in it, without the intervening relation of some other person. It is, doubtless, very simple. It has never yet been defined, otherwise, than by the mode of acquisition; as, this piece of land is A's. He purchased it. It was given to him. It came to him by descent. Indeed, to simple objects of perception, whether substances, or relations, names are necessary, but definitions are useless, and impracticable.

Nature has denied them, in every instance. The discovery, therefore, of simple objects, or simple relations, is not from reason, but intuition. This sense, though limited, at first, and, like the other faculties, subjected to a course of improvement, is discoverable in the early stages of life. The infant has, clearly, a sense of the right of property, though not of the modes of acquisition. He seems, before he is capable of consequential reasoning, as clearly to discern his right to his rattle-box, as the adult to his horse, purchased with his money, or his labor, and vindicates his property with as much apparent consciousness of that right. The perception extends, however, little farther than his own right; it can hardly be said to extend to the rights of others.

Many brute animals, to whom we have denied the powers of reason and investigation, appear, evidently, to have a sense of property. Give a bone to a dog, he takes it boldly as his own. Let another attempt to rob him of it, he stands boldly in its defence, with a seeming consciousness of his right of property; while the aggressor approaches with an apparent consciousness of guilt. The ox claims a right to his stall, and the dog, again, to his wonted corner. Instances have been given of a sense of this right in the ape, the beaver, the stork, and some

some other animals, which have not fallen under my observation. I, therefore, omit them. It would be strange if Providence had been less kind to man, than to the brute creation—man, to whom property is so extensively useful, and which, in a state of society, becomes the object or the instrument of most of his moral actions.

It was observed above, that the perception is only of the right, or of the relation, which constitutes property, but extends not to the modes of acquisition. These modes, according to the state of society, may be very various. In the early stages of society, or, what is frequently called a state of nature, the objects of property, are almost as few, and the modes of acquisition nearly as simple, as among many tribes of the brute creation. The objects of property are only those things, which are barely necessary to support existence. The modes of acquisition are, mostly, confined to prime occupancy, and some trifling productions by labor. The simple modes of gift and exchange are soon added. In the progress of society, men learn to apply to their use, either for their necessities, or their pleasure, most of the numerous productions of nature. By the assistance of art, as the powers of the mind expand, they vary, and multiply these, without end. In proportion

tion as men enlarge their views of what is useful or agreeable, the hoarding appetite gains strength. They become eager of the present, and provident of the future. The objects of property become equally numerous with the objects of desire. In such a state, the modes of acquisition are greatly diversified, and are made the subject of a great variety of laws and regulations. The whole business of property now appears to be an artificial system; but the modes of acquisition only are the subjects of artificial regulations. The right itself, of property, is substantially founded in the relations of nature, and is discovered by a natural sense, an intuitive perception. The business of acquisition, serves only to bring the subjects of property within the compass of those relations.

Here let me observe, that from this view of the right of property, we clearly discover, that it is not, as many writers have asserted, the creature of the civil law only. The consequences, therefore, which they have drawn from this position, "that on a dissolution of government, all property is annihilated; and that every revolution of government, or radical reformation, is destructive of the right itself of property," are by no means just. Civil protection only is lost. The security of enjoyment

is

is endangered. The right itself, founded in the primary relations of nature, remains unchanged. But to return.

Without this perception, the right of property could be but weakly guarded by the moral sense. Were it a discovery of reason, a conclusion to convenience only, it must wait a considerable maturity of the reasoning powers. It must be wholly unattainable to children; and, certainly, no persons, until they had, in one way or other, attained the perception, could feel any obligation of restraint. Force alone could prevent a constant violation of the rights of property. Prohibitory laws would be considered as so many arbitrary impositions. How much better is the plan of Providence! Who can forbear to admire the wisdom and goodness displayed by the Author of our being, in thus adjusting the nature of man to that social and civil state, which he has ever found necessary, not only to his happiness, but to any tolerable existence in life? Deity has implanted in the nature of man, the germ of every necessary qualification, and left to him the cultivation. More, it is probable, could not be indulged to a moral agent.

SECTION III.

Of the Coincidence between Natural and Civil Liberty.

THAT Man, on entering into civil society, of necessity, sacrifices a part of his natural liberty, has been pretty universally taken for granted by writers on government. They seem, in general, not to have admitted a doubt of the truth of the proposition. One feels as though it was treading on forbidden ground, to attempt a refutation of what has been advanced by a Locke,* a Beccari,† and some other eminent writers and statesmen.‡ But while we venerate them as men, who have extended and improved the most important science, the science of government, we shall

* Locke on Civ. Gov. 221. 245.

† Bec. on Crimes and Punishments. Ch. 1. & 8.

‡ "Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend, as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw, with precision, the line between those rights, which must be surrendered, and those which may be preserved." Letter from the Convention for forming the Federal Constitution, to the President of Congress, of the 17th of Sept. 1787.

shall do them no injustice to suppose, that, in so vast a field of enquiry, they may have left some part not sufficiently explored. The revolution in America has opened new avenues to the science of government.

We have already seen, that the laws of nature, as they relate to man, are the laws of social nature; and that they have a particular relation to the civil state. Indeed, it would be strange to suppose, that the God of all order, had, in the very nature of man, implanted the seeds of incongruity and contradiction. That from an undue cultivation, which is the work of man, incongruities and contradictions should arise, is not a subject of wonder. The abovementioned writers, and after them, the learned Judge Blackstone,* have asserted, that man, on entering into society, sacrifices a part of his natural rights, a part of his natural liberty, the better to secure the remainder. They speak of it as arising from the original laws of his nature, and the necessary nature of civil institutions. The position sounds very harsh, that, to the enjoyment of civil society, man must give up a part of his natural liberty; but it is always closed with this consolation, that, he, thereby, gains a greater security for the remainder, and is, in point of happiness, a great gainer by the exchange.

* Black. Com. V. I. 125.

exchange. The pursuit and attainment of happiness, is agreeable to the laws of man's nature, and dictated by them. If this be true, is it not sufficient to suggest a doubt, whether the state, in which that end is most perfectly answered, be not the true state of nature? Whether those natural rights, which are said to be given up, the principal of which, are, the right of judging in his own cause, and of taking satisfaction, or rather revenge, at his pleasure, are rights, which any man is qualified to exercise, in all cases, consistently with his own happiness, or that of others? Whether, in an unimproved state of society, the infancy of the human powers and faculties, an incapacity of developing the whole laws of his nature, and consequently, of carrying them into full effect, these rights are not given to man, as a temporary provision of necessity? And that, when he is arrived at a maturity to be capable of civil combinations, and a better provision for carrying into effect the laws of his social nature, as far as such provision can be made, they cease to the individual of course? It surely affords a much more agreeable reflection to suppose, that, arising from human nature, taking in a capacity for improvement, which makes

* This subject is farther examined in the first Section of Sketch IV.

a part of the constitution, there is no such opposition between natural and civil rights. That, in some governments, men are deprived of their natural rights, is true; but it is equally true, and equally comprehensive to say, they are deprived of their civil rights. Such governments, either in their constitution, or administration; from weakness on the one side, corruption or wickedness on the other, have deviated from the true principles of nature.

The Americans should know, from experience, that little more is necessary to the discovery of the coincidence of natural and civil rights, than the removal of ancient prejudices, or to their reconciliation in practice, than the removal of powers and biases not warranted by the laws of nature. From the progress, which has already been made, they have good reason to believe, that the weaknesses only, which are incident to human nature, not any opposition of principles, prevent the attainment of this end in the highest perfection.

The Marquis Beccari speaks of a sacrifice of that universal liberty of action, common to all sensible beings, and limited only by our natural powers.* May not this liberty be as well predicated of a machine? When we speak of the liberty common to man,

G

liberty,

* Essay on Crimes and Punishments. Ch. 8.

liberty, and a right to act, are convertible terms. Man has a natural, that is, a mere physical power, to injure both himself and others. But is a liberty to do this accorded to him by the laws of his nature? that is, a right to do wrong. Power, and liberty, are not of equal extent in signification. Power is, in a strict sense, that, by which we are enabled to exercise our liberty; not the liberty itself, when considered as a right. In a larger sense, it comprehends, both the right, and the power. Civil liberty is generally taken in this sense. It will not be suggested, that liberty and moral obligation are at variance. I think, therefore, it will be more just to say, that, liberty of action, common to sensible beings, is limited by their natural powers, by the obligations of morality, in a word, by the laws of their whole nature. To give up the performance of any action, which is forbidden by the laws of moral and social nature, cannot be deemed a sacrifice.

It may be said, that all men have a right, individually, to pursue their own interest and happiness; and that, in the commerce of civil society, there will arise oppositions, which will, frequently, oblige one to sacrifice his interest, or happiness, to that of another. I answer, 1. The more men are found in a state of individual independence, and the less they direct their conduct by

mutual laws, the more frequently, will such oppositions arise, and sacrifices necessarily be made, and that under circumstances of violence.—2. Man, as a being, sociable by the laws of his nature, has no right to pursue his own interest, or happiness, to the exclusion of that of his fellow men.—

3. The laws resulting from the reciprocal social relations of men, dictate, that, when, from a want of foresight, or from the nature of the objects of pursuit, an opposition arises, there should be an amicable compromise. Beyond this, nature may have given power, but she has accorded no liberty, no right to man.

This is the true principle of all commerce and exchange amongst men; of the accommodation of all civil claims and privileges, and the mutual submission of private opinion to public sentiment. It is true, that men, in their private intercourse, often lose sight of this principle, and that, in public bodies, it is too much neglected. The interests of the minority, which, upon a right of mutual compromise, are entitled to a proportionable regard, are too often neglected, or wholly sacrificed to the more powerful interests of the majority. Still, the principle, however neglected, exists in the immutable relations of nature. If the neglect, or violation of any rule, natural,

political, or revealed, were sufficient to prove, that it was not binding, that it was inapplicable, or that it was abrogated, what one rule would have remained for the conduct of man?

Montesquieu, in treating of a subject, which led him to make a comparison between a state of independence, the supposed state of nature, and a state of civil government, says, "Liberty consists in not being forced to do a thing, which the laws do not oblige. People are, in this state, only as they are governed by civil laws; and because they are governed by civil laws, they are free. It follows from hence, that Princes, who live not among themselves under civil laws, are not free; they may continually force or be forced."* Sovereign Princes are, in respect to each other, in what is called a state of natural independence. In another place he observes, "As men have given up their natural independence, to live under political laws, they have given up the natural community of goods, to live under civil laws; by the first they acquired liberty, by the second, property."† However defective the above definition of liberty may be, it appears from these passages, that Montesquieu differed from other

* Sp. L. B. 26. Ch. 20.

† B. 26. Ch. 15.

other writers, in his opinion of the liberty enjoyed in the two states. He clearly supposes, that man, on entering into society, makes an acquisition of liberty, without any sacrifice; or rather, that he thereby secures, to himself, free from the danger of deprivation, by force, the common rights of his nature. If I am not deceived, what has been said in this section, proves the opinion to be well founded, and that all the rights of man are relative to his social nature. They exist only in a coincidence with the rights of the whole, in a well ordered state of society and civil government.

When, therefore, we find an infringement of the natural rights, or liberties of the people patronized by the constitution of the state, or admitted in the administration, we ought not to excuse ourselves from searching the cause, and applying a remedy, under a persuasion, that the people, from a certain necessity of nature, consented, in their civil compact, to sacrifice a part of their natural rights, the better to secure the remainder. At the same time, we ought to be cautious, how we disturb the happiness of the community, by an attempt to exercise those rights, which, in the infancy of society, an incapacity to discover, arrange, and give effect to the

more general laws of social nature, were lent to man, as a provision of necessity only.

S E C T I O N IV.

Considerations on a Disposition in Man, to abuse the Powers of Government, with which he is entrusted.

THE question, whether Man be originally depraved—whether a disposition to evil, a relish for vice, as such, be a part of his nature, in the present state, I leave to be discussed by the moralist, and the divine. I am, here, to consider his natural powers, his disposition and actions, as they relate solely to his political state. Moral writers have gone upon different, and opposite systems, respecting the origin of moral evil, and the natural disposition of man, as affected to virtue and vice. Political writers have, uniformly, agreed. From Machiavel to Dr. Price, all have assented, that, in a political character, when entrusted with power, man is totally depraved, wicked, and corrupt; that the utmost perverseness, in power, is inherent in his very nature; that he is never good, but through necessity.

Hence

Hence mutual checks, restraints, and opposition of powers are found necessary to guard against the oppression of rulers.

This, if true, militates directly against, what I have all along been endeavoring to establish; that man, by the original constitution of his nature, is fitted for civil government; or, as I have elsewhere expressed it, that Deity has implanted in him the germ of every necessary qualification, for that state. Little, however, is man fitted for civil government, if no one is fit to be entrusted with the execution of its powers. Before we admit an opinion, which so much vilifies the nature of man, and would, if believed, almost tempt one to call in question the goodness of its author, let us candidly consider the reasons, upon which the opinion is founded.

It is said, and truly, that every page of history is pregnant with instances of the abuse of power. The long line of Roman Emperors, with very few exceptions, were scourges of the earth. All the Kings and Nobles of ancient and modern times, not excepting the philosophic Frederick of Prussia,* have given full and convincing
proofs

* The late King of Prussia, was undoubtedly one of the best of modern absolute Monarchs. He was a man of letters and philosophy. He did much, in time of peace, to improve the condition of his subjects.

proofs of the danger of entrusting to men any degree of power, to be exercised in their

subjects. The wisdom of his civil regulations have long been a theme of panegyric. Yet he was guilty of the most flagrant abuses. His savage treatment of Baron Trenck, would have condemned, even a Monarch, less illustrious, to eternal infamy. "While his army was in Great Poland, in 1771, he obliged the inhabitants, under the severest penalties, to take in payment, for forage, provisions, corn, and horses, the money offered by his Commissaries and troops. The money was either silver bearing the impression of Poland, and worth exactly one third of its nominal value; or ducats, struck in imitation of Dutch ducats, seventeen per cent. inferior to the real ducats of Holland. With this base money he bought up corn and forage enough, not only to supply his army for two whole years, but to stock magazines in the country itself, where the inhabitants were forced to come and repurchase corn, for their daily subsistence, at an advanced price, and with good money, his Commissaries refusing to take the same coin they had paid. *By this honest and masterly manœuvre, it is said he gained, at the lowest calculation, seven millions of dollars!!!*"—A crime much less mean and base, would have gibbeted one of his subjects.

His attack upon the city of Dantzick, in the year 1769, can be reckoned only a piece of *Royal villainy*. "The share, which the same Monarch had in the partition of Poland, must stamp his character, notwithstanding the encomiums bestowed upon him by the minions of kingly power, with indelible infamy and disgrace."—See the life of Frederick III. King of Prussia, in the *Literary Magazine* for the year 1791. Vol. VI.

their own right, without controul. An effect so universal, it is said, must have a universal cause in the nature of man. All this is true ; and yet I will venture, at the hazard of being thought singular, to dissent from the common opinion, respecting the real cause. I apprehend the effect is not so generally produced, by any malignity, any culpable disposition in the nature of man ; but that it is mostly the effect of situation. I do not doubt the universality of the effect, or rather, if you please, of the event, of a constant abuse of power, in certain situations. I doubt only of the cause. I think the cause is of a nature very different from that, which has usually been assigned. I suspect, that it is a little more complex, and, that it is the effect of other causes ; some existing in the nature of man, others arising from the nature of the power, and the usual mode of betrustment. It will, perhaps, be thought, if the effect, in all the extent and uniformity contended for, be allowed, it is of little consequence, to the science of government, what the particular causes are. The same checks, the same opposition of powers, will be necessary, to guard against the abuse. But let it be remembered, that, in applying a remedy to an evil, little success can be expected, if the cause of the evil be unknown,

known, or mistaken. It is much more eligible, where there is a possibility, to remove or prevent the cause, than to be obliged to maintain a constant struggle against the effect, or to be perpetually employed, in palliating, or diverting its malignity. According to our different apprehensions of the cause, the remedy applied will be different, and the event more or less successful.

It must be remembered, that man is a complex being. He is by nature constituted with a great variety of passions, appetites, powers, and faculties; senses, external and internal, adapted to the perception of objects, and relations, physical and moral. Some of these have a more immediate relation to his individual being and happiness; yet not so as to stand opposed to society. Others have a more immediate relation to society; yet not to the exclusion of self. He was not made for independence, but for mutual connexion, mutual dependence, and to this, every thing in his nature is, more or less relative. On the right discernment of moral relations, either singly, or in their various combinations, arising from objects, situation, and circumstances, depends the justness of his moral perceptions; on marking the result with precision, depends the knowledge of his duty,

duty, a knowledge of the laws of his nature. He is, from the constitution of his nature, capable of impressions from an infinite variety of objects, both external and internal. For the operations of the mind, by reflection, become objects, and again have their impressions. These impressions give an equal variety to the modifications of his passions, appetites, powers, and faculties, not only singly, but in all their various combinations. The result of all these, constitutes the temper, disposition, and character of the man; and from the various modifications, arises, in some measure, the various influence of motives. Were man left in this situation, he would be the sport of blind impulses. There seems to be a necessity for a balance, as well as some arbiter of moral action. The power of reasoning, by which he combines, compares, distinguishes, and marks the result, has, by some ethical writers, been considered as being to man, the balance of his moral powers, and the arbiter of his actions. I think this is not the office of reason. Reason is rather the hand that adjusts the balance, limits and extends it, than the balance itself. However nice and metaphysical this distinction may seem, I promise, that it will lead to some important consequences in the economy of man.

It

It may be asked, What is, to man, the arbiter of his actions? What the balance of his moral powers? I answer, The moral sense is, in all cases, the arbiter of moral action. Reason is an advocate, to argue, compare, and inform; but to conscience, or the moral sense, is left the ultimate decision. I believe every one will be capable, of this distinction. The remaining part of the subject is, indeed, a little intricate. I do not despair, however of making it intelligible to those, who will attend to what passes in their own minds.

It was observed above, that man is a being constituted with a great variety of powers, faculties, passions, and appetites. These are capable, from various impressions, to which the mind is subjected, of an almost endless variety of modifications and combinations, which furnish to motives, different directions, and different degrees of force. To a being thus constituted, some balance, to prevent the utmost capriciousness of conduct, and give him a command of any choice in his actions, some constant regulator is necessary. A little attention to those faculties of the mind, which constitute the reasoning powers; to their operations; to the manner in which they are affected, influenced, and biased, by external impulses, or internal

ternal combinations, will discover, that reason, instead of being qualified to serve as a balance, has, itself, need of a balance, a steady principal for its regulation. Nature, always equal to her wants, has provided such a principle. This is a sense of accountability found in the breast of every rational being. Mention was made of this sense, in a former section; but I find it necessary to examine it with a little more attention.

Whether the sense of accountability be a distinct sense, a branch of the moral sense, or a certain state of the mind, produced by the moral sense, in a perception of certain moral relations, and in a view of certain objects, is not easy to determine. I am, however, inclined to believe the latter. In examining this principle of our nature, it will be necessary to keep in view the moral sense; the sense, by which we discern moral relations.

Man has, as was observed in a former section, a passion, a desire, an appetite, call it by what name we please, for the approbation of others. He extends it to all intelligent beings, whom he conceives to be, in any way, conscious of his actions; and its force is increased, or diminished, in proportion to the relation, or connection, in which he conceives himself placed, in re-

spect to such beings. In the same extent, and in the same proportion he dreads their disapprobation, or censure. When the moral sense informs him, that his actions are right, he is conscious, that he deserves their approbation. On the contrary, when he has done wrong, he is conscious, that he is deserving of their censure. He is conscious to himself of a feeling of approbation, and disapprobation of the conduct of others, as he views it to be right, or wrong. Judging from his own feelings, and the expressions he meets in others, he rightly expects to find the same sentiments in all. Thus man finds himself bound to his duty by a three fold cord of accountability,—to God—to himself—and to his fellow men. Thus the moral sense, and the sense of accountability, constantly operating, though not exempt from the imperfections incident to the nature of man, constitute the balance of his moral powers, and a steady principle for the regulation of his actions. Reason, by comparing circumstances, marking the result, and detecting the impositions, to which all the senses, as well external, as internal, are, more or less liable, is qualified to adjust the balance. Here we may again observe, that neither the moral sense, the sense of accountability, or the reasoning powers, are given in perfection

fection to man. They are but plants in the germ, the growth and improvement of which is to be expected only from a proper cultivation.

I cannot but flatter myself, that the distinctions, which I have endeavored to make, are intelligible, and the principles fully ascertained. By the assistance of these principles, we may, perhaps, be able to throw some light on the question concerning the origin of so universal an abuse of power.

The propriety of a man's conduct, will depend, principally, on a just discernment of moral relations, an accurate perception of what is right and what is wrong in moral action ; on the means of information, the strength of his reasoning powers, and a full sense of his accountability, to his Maker, to himself, and to his fellow men. In proportion as there is a deficiency in one, or all of these, he will be exposed to a vicious conduct. Every deviation from right, by changing the force of habit to the weaker side, strengthens and confirms the bias. He, therefore, who, in life and action, would persevere in virtue, must beware, how he indulges any deception upon the moral sense, any bias, upon his reason, or a relaxation of his sense of accountability. Free a man from his sense of accountability only, he is left to the dominion of the
passions

passions and appetites, and driven precipitately into vice ; as if, from a watch in motion, you were suddenly to detach the balance. That branch of the sense of accountability, by which man perceives his actions, of right, subjected to the approbation, or censure of his fellow men, is not the least efficacious in preserving the balance of his moral powers. Yet this sense, so necessary to the moral being, may, as it regards mankind, be wholly suppressed, merely by the situation of the man. Place a man either above, or below the regard of mankind, and he will no longer feel himself accountable to them for his actions. He, who, in such a situation, can maintain the guard of his virtue, and successfully resist the sollicitations of his passions and appetites ; the covert approaches, and the open attacks of vice, is something more than human. Such is the original adjustment of human nature, its parts, connections, and dependencies, mutually supporting and supported, from which result the laws of moral action, that not a pin can be loosened, without endangering a derangement of the whole structure.

That political situation, which places a man, in any degree of independence on those, over whom he exercises a power, in the same degree cherishes the emotions of pride.

pride. It transforms that, which, before, was only a laudable contempt of what is low, mean, and unworthy the man, into haughtiness, under the name of grandeur. It excites a contempt for men, and suppresses those sentiments, which subjected him to their approbation, or censure. Such has been, more or less, the situation of all hereditary Monarchs on the globe; of all aristocrats, and aristocratical bodies; of all men in power, who have had, or conceived themselves to have the ability of continuing their power, independent of those, over whom it was exercised; in a word, of all those, who hold their power in contempt of the people. A situation, not indulged to man, by the laws of his nature, and which Providence has, often, hitherto with little effect, warned him, by the pernicious consequences, not to entrust to any one of the race. The wonder is, not, that men, in such a situation, should have been guilty of so many vices, but that they should have exhibited even a few virtues. Could we strip the actions of Princes and Nobles, of the eclat of character, how few have been these virtues, we should be informed, in every page of their history.

Instances of constant and flagrant abuse of power, by men, thus situated, demonstrably prove, that it is dangerous to exceed

the limits of our nature, to step beyond the reach of its laws ; but they prove no original malignity in man. In a different situation, within the limits assigned by the laws of human nature, men have administered the powers of government, with the greatest abilities, and the most exalted virtues, for the sole good of the community. May we not instance more than one example in the United States of America ? In situations, in which rulers have held themselves fully accountable to the sentiments of the people, for the exercise of the powers, with which they were entrusted, they have conducted with as much integrity and virtue as have been exhibited in the more private scenes of life. It must be allowed, indeed, that few such situations have yet been devised by political wisdom. When a people are capable of forming a constitution of government upon natural principles, and establishing a power of administration within the limits assigned to man by the laws of his nature, they will be secure against the danger of any exorbitant abuse. Care must always be taken to guard against all independence in the rulers, on the sentiments of the people, and to provide, that they shall administer, not their own power, but the powers of government.

If these observations be just, whatever
human

human institutions may have done, nature has not disqualified man for any of the functions of civil government.

SECTION V.

Of the Necessity of Civil Laws and Government.

AGREEABLY to the plan of the present Sketch, one question only remains for discussion. Whence arises the necessity upon man of adopting civil laws and government?—As was before observed, some have thought, that the necessity arose from the perverseness solely of human nature. They assert, that men have, inherent in their nature, a relish for vice, an original propensity to evil; to restrain the malignity of which, they were laid under a necessity of civil government; that true virtue, genuine benevolence, would have led them, happily, through the most complicated scenes, which could have fallen to their lot in society. How the account stands between them and their Maker, it is not my present purpose to enquire. I shall only observe, that their civil and political conduct

conduct, does not avow a consciousness of such depravity of nature. They appear, in all cases, where no particular bias of passion or interest is discoverable, to have full reliance on the justice, integrity, and veracity of each other.

Some, who have had less gloomy views of human nature, have holden, that the necessity arises from the weakness, only, of individuals, requiring mutual aid, for supplying their mutual wants. This would, however, lead no farther, than the social state. It would not, alone, induce the necessity of civil government. We have seen, that man, by his natural constitution, was intended for the latter state. We shall now find, arising from his nature, a necessity for adopting it; but a necessity of a very different kind from any thing, which has been suggested.

Men have a relish for society. It is the scene of their improvements, and the great source of their happiness. Still no goodness of heart can enable them to enjoy its benefits, without an establishment of laws.

Perception, consciousness, and volition, or those powers, which originate, and direct external action in men, belong to them, individually. A society consisting of any number of individuals, can have no common

common united perception, consciousness, or volition. Could this be the case, a society might will, and with a single act of volition, direct, and controul the actions of all, and every member, with the same ease and regularity, with which an individual directs, and controuls the motions of his own body, and its members. But this is denied to man in the aggregate, and in every combination of society. The will of a society is made up of the individual wills of its members.

Had man been formed with faculties, which might have enabled him, with an intuitive glance, to penetrate, and comprehend as they arise, the individual wills of all the members of the society, and of all, whose conduct, might in any way affect it; to penetrate and comprehend the passions, appetites, and pursuits, of every individual; in a word, to comprehend all the causes, by which God governs the actions of moral agents; were he endued with reason, sufficient to arrange the whole, so as to prevent any individual interference; goodness of heart and firmness of mind, to enable him to pursue the arrangement; in such a state, both of knowlege and disposition, he would stand in no need of civil laws, or rules prescribed by common consent, for the regulation of social conduct.

duct. But such a state falls not to the lot of any finite being.

Our positive knowlege is, only partial, of the present and past, depending on actual and accurate observation. There is, however, given us some clue to the future. We are able to perceive certain relations of cause and effect. As far as experience leads, we find a uniformity in the course of nature. We discover some of the causes, and some of the laws, by which physical effects are produced in a regular chain. Of others, we are wholly ignorant, or have, at best, but an imperfect glimpse. Much more imperfect is our knowlege of the causes, which produce and vary human actions, subjected to the influence of motives, to the choice of the agent, and to those laws, by which they are governed in a train. In an extensive society, individuals can have but a limited knowlege, even of the present actions of the whole. Their knowlege of the intentions and causes, upon which the future actions depend, is much more limited. We are able to gain some knowlege of the leading principles of actions, of the motives which generally prevail, and the species of action, which they will produce, in certain characters, and in certain situations. To descend to every situation, every character, and thence to

to learn fully, the particular influence of motives and the individual actions, which will follow, in each, is beyond the reach of human sagacity. In a society composed of any considerable number of individuals, and in a state of any considerable activity, there will be many, and very different situations. The influence of motives upon individuals, will be very different. They will have a variety of distinct interests, and pursuits, and those, not at all, or very imperfectly known to each other in their origin. However innocent and right, those interests and pursuits may be, when considered separately, they will, by frequent, though unintentional interferences, and oppositions, form a scene too intricate for the powers of the human mind to evolve. Could we suppose every person in the society to be actuated, by principles of the most disinterested benevolence, and the most accommodating spirit, the whole time must be consumed in compromise. None could be left for action.

Without a social perception, consciousness, and volition, with any goodness, and with any wisdom, short of infinite, the state of society would, at best, be a scene of inextricable confusion. To Remedy this confusion, nature has pointed out to
man

man, the necessity of civil establishments, and the promulgation of laws. Here is a provision analagous to his nature. By the establishment of laws, which the individuals of the community have submitted to observe, as the rules of their future conduct, they are enabled, with a sufficient degree of certainty, to foresee the future interests and pursuits of each. By following the line prescribed, they can avoid every considerable interference, or by applying the rule, may remedy the inconvenience. In no other way, is it possible to connect a community, either in sentiments, or interests; to unite the public force; to direct it to the attainment of any common good, or to the avoiding or repelling of any common evil. In no other way is it possible to give any security to public or private rights.

Still men are imperfect. They will be guilty of deviations from the rule, transgressions of the law, and infringements of each other's rights. This will happen, some times, thro' ignorance of the law, or of the right; an ignorance, which arises from weakness in judging, or inattention in examining. Sometimes, it will happen thro' the prevalence of interest, or the violence of passion. Therefore, to give the laws a compulsory force, and to secure a general ob-

observance, they must be so calculated, that every member of the community shall find a convenience, in the observance, and a certain inconvenience, in the neglect or violation. Hence arises the necessity of penalties. These penalties are, from the weakness of men in discerning tendencies, and their consequent liability to vice, necessarily enhanced. Hence also arises the necessity of subordination, and of civil rulers, to give activity and efficiency to the laws. In a state of greater perfection, than is to be found, in the present state of society, a greater perfection of knowledge and virtue, penalties may make a less formidable appearance ; but, in every state, the necessity of penalties will equally exist.

In a community composed of a few individuals, in a simple state of manners, and of property, the motives to action are few ; consequently, there is little activity of individuals. A few simple rules, mostly adopted and supported by custom, and frequent consultations, upon present emergencies, supply the place of a more regular polity. They are the first rude essays in civil institutions. Still, in every state of morals and manners, a necessity of known and established rules equally exists. On the whole, we may safely conclude, that no order of beings, short of infinite perfection,

section, in wisdom, as well as goodness, can subsist in society, without an establishment of government and laws.

S K E T C H I V.

OF THE CONSTITUTION AND ORGANIZATION OF GOVERNMENT.

SECTION I.

Different Degrees of Improvement introduce different Forms of Government.—A source of false Reasoning.—Brief View of the Rights of Man.—An Inaccuracy of Mr. PAINE, in treating of this Subject.

ALL our reasonings, drawn from the nature of man, induce the most satisfactory conclusion, that he was intended for society, and coincide, in the largest sense, with the divine enunciation of his Maker, "It is not good, that man should be alone." Reasoning from the same source, it is equally clear, that he was intended for civil government, and laid under a physical necessity of adopting it. Men have generally been struck with the necessity, long before

before they were able to discover, and arrange those laws of their nature, which lead to a safe and happy establishment, upon natural principles. It has passed into a proverb, that any government is preferable to anarchy—a state of individual independence.

The general circumstances and manners of the age have prevailed to general establishments, in forms of government. The general circumstances and manners of a people, have prevailed to particular establishments. In the very early stages of society, while simplicity in manners, in knowledge, in wants, and in means, prevails, there is, always, a great degree of equality among men. The passions, which, in some of the following stages, lead to inequality, rarely exerted, hold nearly an equal tenor. Every thing is enjoyed in common. This state is a kind of natural republic, suited to the infant state of humanity. It has been observed, that this is a state of nature; but the nature of man points him to improvement. A perpetual continuance of a nation in this state, would be as unnatural, as perpetual infancy to an individual.

In the progress towards maturity, the avenues to knowledge are discovered, by circumstances, accidental to man. He

cannot, from the limitation of his powers and faculties, proceed on generals. His progress is in particulars. One discovery opens an unexpected avenue to others. Proceeding thus by particulars, it is clear, that the progress of knowledge must be slow, and the views exhibited to the mind necessarily partial. Objects, in the progress, arising singly, and surprising by their novelty, have a powerful effect upon an unimproved mind. Accordingly the few passions, which they are calculated to excite, are powerfully inflamed. The moral sense, and the reasoning powers can never be in advance. They, necessarily, pursue at a distance. Such is the progress to improvement; such the boisterous youth of humanity; such the difficult passage from ignorance to the knowledge of truth, through a wilderness of errors. Hence the moral balance is, frequently lost, and a violent state of the passions, which gives a peculiarity to the manners, succeeds. Both the vices and the virtues are more prominent. There happens a frequent change of manners, but seldom for the better. The change arises from the prevalence of one kind of passion or appetite, and a succession of different objects of gratification. It is a change from one mode of violence to another. Violence is still the great cha-

characteristic. Hence, we find a resemblance of monarchy and aristocracy, in the passions. In this state of society, men almost unavoidably, fall into a monarchy, or an aristocracy in government; institutions of violence, for the restraint of violent passions.

Men proceeding, gradually, in improvement, though, with frequent digressions, and retrogradations, to what may be called a state of social manhood, the natural passions, from a more general acquaintance of the mind with objects, are brought more equally into exercise, and form a mutual check on the violence of each other. The reasoning powers, by constant and extensive employment, acquire acuteness, comprehension, and strength. The moral sense, and the sense of accountability, acquire a greater degree of ascendancy. It is perceived, that happiness consists, not in excess, but in equable enjoyment; and, that the violent indulgence of one passion, excludes the gratification of the rest. Hence proceeds a moderation. In this state, there is more gratification, and less violence. The happiness, which men experience, in social intercourse; a more extensive knowledge of the original constitution, and destination of their being, and the harmony of general laws, thence resulting, open a new

scene in society, and prepare them, in a good measure, to rejoice in a reciprocation of rights, and a mutual compromise of interests.

Such a state of society and manners, gives a more general operation to the laws of social nature, which I have endeavored to elucidate, and suggests the establishment of government upon the sure basis of natural principles.

Is it not probable, that certain degrees of improvement, in science, in morals, in manners, and sentiments, will tend to an abolition of every other form of government; and to the establishment of Democratic Republics,* in which alone, we have reason to believe, from the observations made above, natural principles can have any general operation? Not, indeed, because such a state will directly suggest these principles; but it will lead the people to a discovery of their rights as men, and the abuses, which they have suffered from arbitrary, and tyrannical impositions, continued from institutions, which were provisions of necessity, during their pupillage. Such a discovery will lead them to a discussion of original principles, and suggest, as the only means of securing a free and equal

* By *Democratic Republic*, in these Sketches, is, generally, meant, a Representative Democracy.

equal enjoyment of their rights, the necessity of placing the exercise of the powers of government, within the limits, which the God of nature has prescribed.

In a different state of society, before men had arrived at these general and equal improvements, an impatience under all restraints, added to frequent oppressions, has suggested a wish for popular government; but whenever, in this state, it has been introduced, the violence of the passions, manners and sentiments, have rendered the government violent, fluctuating, and almost constantly tending to its own dissolution.

By tracing into exercise, in governmental establishments, those principles, which have been discussed in the preceeding Sketches, and marking their operations, we shall be able to discover their coincidence with the rights of man. We may, likewise, be able to discover and prevent the admission of principles, which are not derived from the constitution of nature, but have their origin, in adventitious circumstances; in ignorance, violence, or corruption.

The science of government has shared the same misfortune, which has so much perplexed the science of divinity, and the science of morals. Men have generally began the two latter, where they should

have ended them.* For many centuries divines and moralists assumed at pleasure, attributes and counsels for deity, according to the systems which they were engaged to support; and from what he ought to do, according to their various assumptions, determined what he has done, and what he will do, in the moral government of man. The great truths of religion and morality have been subjected to their opinions. Had they, instead of reasoning from their assumptions, *a priori*, began with man, and the things which have been made, and from what has been done, and is still doing, in the natural and moral world, searched for the creator, they might have prepared the way for some knowledge of God, his attributes and moral government, and as far as it concerns man, have caught some glimpse of his counsels.† In

* Dr. Price has, I think, somewhere, a similar observation concerning religion.

† If the expression in this passage should appear to any one liable to exception, let him remember, that the doctrine is not new. It is fully asserted by one, whose authority will not be doubted, at least by such as may be disposed to object—"That which may be known of God, is manifest in them (the Gentiles) for God hath shewed it unto them; for the invisible things of him from the creation of the world, are clearly seen, being understood from the things which were made, even his eternal power and Godhead; so that they are without excuse."—PAUL to the Romans.

In the science of government, politicians, in like manner, universally began with the Rulers. For them they assumed all power, all right, and transferred all duty to the part of the subject. Agreeably to their doctrines, every enjoyment on the part of the subject, was an indulgence flowing from the clemency of the Prince. They have considered, that he was the source, the sole proprietor of all right, of all honor, of all justice; and dealt them out to the subject at his sovereign pleasure.

The revolutions, which have happened, among the nations of the earth, in knowledge and in government, have, by degrees, opened the eyes of mankind. They have, in some instances, learnt, and have even dared to assert, that all legitimate government is founded in the rights of the people; that it is an institution for their convenience and happiness; that the ruler has no right as a man, beyond that of every individual; and that the power, which he exercises, is not his power, but the power and right of the people, entrusted for their benefit. A ruler may be a benevolent man. He may discover his benevolence, in the exercise of the power, with which he is intrusted. It may give a lustre to his character, a facility to his administration, and render him more worthy
of

of the trust. But he can never indulge to the people a right, of which they are not the original proprietors. The time seems to be at hand, when, among many nations, the clemency of the Prince will become as contemptible, as the dispensing power of the Pope, and will be deemed equally an insult on the common sense of mankind.

Before we proceed to treat of the organization of government, it may be necessary to take a summary view of those rights of man, to secure the free, equal, and legitimate enjoyment of which, is the principal object of civil institutions.

I shall take the liberty to use the words of Mr. Paine, to which I shall add a short comment of my own :

“Natural rights are those, which ap-
 “ pertain to man in right of his existence.
 “ Of this kind are all the intellectual rights,
 “ or rights of the mind. And also all
 “ those rights of acting as an individual
 “ for his own comfort and happiness,
 “ which are not injurious to the natural
 “ rights of others. Civil rights are those,
 “ which appertain to man in right of his
 “ being a member of society. Every civ-
 “ il right has some natural right preexist-
 “ ing in the individual ; but to which
 “ his individual power is not, in all cases,
 “ suffi-

“ sufficiently competent. Of this kind
“ are all those, which relate to security
“ and protection.”

He then goes on to distinguish between the natural rights, which man retains, after entering into society, and those, which he deposits, according to his view, in the common stock, as a member of the society.

“ The natural rights, which he retains,
“ are all those, in which the power to ex-
“ ecute is as perfect in the individual as the
“ right itself : Among this class are, as is
“ before mentioned, all intellectual rights,
“ or rights of the mind ; consequently,
“ Religion is one of those rights. The
“ natural rights, which are not retained,
“ are all those, which, though they are
“ perfect in the individual, the power to
“ execute them is defective. They answer
“ not his purpose. A man has a natural
“ right to judge in his own cause ; and so
“ far as the right of the mind is concerned,
“ he never surrenders it. But what avail-
“ eth it him to judge, if he hath not the
“ power to redress ? He therefore depo-
“ sits this right in the common stock of
“ society, and takes the arm of society, of
“ which he is a part, in preference and ad-
“ dition to his own arm. Society grants
“ him nothing. Every man is a proprietor
“ in society, and draws on the capital, as a
“ matter of right.”

These

These observations are, in a general view, excellent. They are not, however, in every point, just. Mr. Paine's genius does not, always, admit of accurate reasoning, either in discovering principles, or in tracing consequences. But what is often of more value, he seizes his object by an intuitive glance, and is generally happy in exhibiting it to others in a striking point of light.

The business of judging is relative to the rights of justice, and comes in for the sake of those rights. Men have, reciprocally, a right to demand justice of each other, and are reciprocally bound, in duty, to make an adequate satisfaction for injuries. The right of judging amounts to a right of deciding, what is just between one individual and another; a right of determining, what satisfaction ought to be made for injuries, and in what manner. The judge is equally bound to judge justly. But, such we know, for a general rule, is the nature of man, that he is incapable of judging justly, that is, impartially, in his own cause. In all matters, which depend on a right of mutual compromise, he is the only judge of his own interest, and an actor in his own cause. In repelling present injuries, a present invasion of his own rights, he has a right to judge, both of the means, and the measure

measure of defence ; and this from necessity. But he must judge rightly, that is, agreeably to the occasion, at the peril of becoming an aggressor. The right is not independent, and without appeal.

There is, therefore, a deficiency in point of capacity to judge, as well as in point of power to execute. From a little consideration, it will be evident, that this right of judging in his own cause, is a temporary right, entrusted to man from necessity only, until he shall have arrived at a maturity to be capable of comprehending and carrying into full operation that law of his nature, which makes him accountable to the judgment of others, and which dictates, in all controversies, a submission to an impartial judge. Every one, as well the party injuring, as the party injured, has a right to an impartial and just decision ; and nature has pointed out the means of obtaining it. The right of justice is perpetual. The right of judging, with a view of compelling satisfaction, is only incidental, and comes in, lest there should be a failure of the former. When men become capable of providing for a regular administration of justice in government, that right, which was designed to be temporary, so far as such provision is made, ceases of course. It cannot be said, with propriety, to be

given up, by any act of the individual, or thrown into the common stock of society. Such rights may, as it respects society, be well denominated juvenile rights. In the progress of society towards maturity, the same thing happens to these rights, which happens to the juvenile passions and appetites of an individual. Many little passions and appetites exist in infancy, and in early youth, which, though proper and necessary to that state, are nevertheless unbecoming the state of manhood. They are never given up, by any specific act of the mind, but agreeably to the constitution of nature, they give place, in the progress of the individual, to passions and appetites proper and necessary to an advanced state, and one after another become extinct.

I am apprehensive that the legal notion of the necessity of a consideration to the validity of a contract, first introduced, or at least, has supported the opinion, that men, on entering into society, give up a part of their rights, as a consideration for the security of the remainder. Writers on government have been anxious, on the part of the people, to discover a consideration given for the right of protection, and the right of justice. While government was supposed to depend on a compact, not between the individuals of a people, but
between

between the people and the rulers, this was a point of great consequence. But it can be of no consequence, when it is understood, that government is produced by the individuals entering into a compact among themselves for that purpose. We have no occasion to look for any consideration for the duty of obedience to the laws, on the one side, or, an equal and just administration, on the other, but the inviolable obligation arising from the laws of social nature.

Nature has pointed out civil government as a mean, not an end; a mean of securing the greatest quantity of happiness to all, with the least possible inconvenience to individuals. Formed, as man is by nature, for society and civil government, he is in a solitary state, or a state of independence, too emphatically, called the state of nature, excluded the benefit of most of the laws of his nature; the free enjoyment of almost the whole of his natural rights, excepting those, which are connected with his individual existence.

The greater part of his rights are not exclusively, and independently, in himself. They arise in society, and are relative to it. Antecedently to that state, they could exist only potentially. The rights of all have a reciprocal relation to the rights of each,

and can never be rightly apprehended, distinct from that relation. Those rights, which Mr. Paine calls the natural rights of man, are more independent, more immediately united to his being, like the consciousness of his individual existence.— Those, which he calls the civil rights of man, are the children of his nature, the issue of the social union, to which he is directed, invited, and impelled, by the laws of his creation. Both are natural rights, and equally guaranteed to him by the laws of his nature. The difference is, that those which he calls natural rights, are independently perfect, and the enjoyment full in the individual. Those, which he calls civil rights, are relative. They arise from the union of men in society. The more perfect the union, the more legitimately natural are those rights, and the more full the enjoyment.

That society, in the administration of right, grants nothing to any of its members; that every man is a proprietor, and draws on the capital, as a matter of right, is one of those high and immutable truths, which are allowed to be taught, in their full extent, only in a democratic republic. In a monarchical, or aristocratical government, the very thought would be deemed a species of treason.

SECTION

SECTION II.

Few Governments formed by an actual Compact.—Instability of ancient Governments.—Social Compact in the Formation of a legitimate Government.—Civil Powers.—Division and Limitation.

FEW governments, ancient or modern, have been constituted by an actual compact among the people. The powers of government, have, in most instances, been blindly conferred upon one, or a few individuals. They have been assumed by fraud, or violence; or through a succession of ages, have been suffered to accumulate in certain families, and become sacred in their hands. Thus the powers of government came to be considered, as the right and privilege of the rulers, inherent, distinct, and paramount to the rights of the people. Men have conducted as though whatever of right, whatever of good was enjoyed, by the subject, was to be derived from the condescension of rulers, a mere concession of clemency. Doctrines like these have, in all ages, by the interested policy of the ambitious few, been artfully, and but too successfully inculcated on the people. From this source has been deriv-

ed the doctrine, of the present perfection of government, the infallibility of rulers, and the divine right of Kings.

On the other hand, the people, from a dread of the horrid oppression, which universally, accompanies such absurd conceptions of power, have, at times, plunged into the extremes of anarchy and popular violence. They have been driven to a feeling, rather than a rational investigation of their rights. They have found it difficult to distinguish clearly, in the exercise of power, between a personal right, and a mere trustment. They have found it still more difficult to establish any laws of accountability, which might operate to prevent a constant abuse, without a constant resort to violent measures. Thus embarrassed, they have frequently balanced between the horrors of tyranny, and the licentiousness of faction. Hence were experienced, at Athens, at Rome, and in many other governments, perpetual vibrations between the violence of the rulers and the violence of the people.

Neither the Greeks nor the Romans had any accurate notions of liberty, and the natural rights of man; of those relations, from which result the sacred laws of his nature. From the ignorance of their lawgivers in these points, which was, indeed, the

the ignorance of the age, there were always radical defects in their governments. In all their systems, they made little or no distinction, between the laws of the constitution, by which the state is organized, and its efficient powers directed and limited, and the laws of property and personal rights. And yet, without a nice attention to this distinction, liberty can never be permanently secured.

An examination of the various constitutions of government, which have existed, or still do exist in the world, falls not directly within my present plan. My design is to attempt a sketch, only, of the constitutional principles of government ; as founded in the principles of natural law, in the moral and social nature of man ; and to point out the general operation and tendency of these principles in exercise.

Whenever men happen in society, they, naturally, and from an unavoidable necessity, the nature of which has been explained, fall into some kind of government. Nature, however, produces few things in perfection to man. Much is left to his choice, and the improvement of his rational powers. Whatever may have been the mode of originating and establishing government, in the infancy of societies, and of knowledge, it is now, in every free & en-

enlightened nation, admitted as fundamental, that all legitimate government originates in the free consent of the people; that to produce a rightful government, the people, among themselves, must enter into a mutual compact for that end. Not that we are to suppose it necessary to its validity, that each individual, in the proposed community, should consent to every article of the compact. Men are by nature social beings. In determining the mode, in which any people shall enjoy the benefits of their social nature, it is clearly a principle of natural law, that, upon a fair discussion, the minority, if they choose to continue within the limits of the society, shall be bound by the decisions of the majority.

In the exercise of this right of free consent by the people, agreeably to the principles now laid down, constitutions of government are formed. The constitution is no other than the fundamental laws made and ratified by such compact, for the purpose of organizing the government, and establishing the necessary powers. The intent of these laws is to direct, in what manner, and to what end, the constituted powers shall be exercised; how those, to whom the exercise is entrusted, shall be holden accountable; and to limit those powers, by precisely marking the rights, which

which are inherent, and unalienable in the social nature of man, the mutual enjoyment and exercise of which does not interfere with individual rights, or obstruct the due exercise of the powers of government, for the common good. This has been found necessary, not because the people are presumed to have submitted to the constituted powers every right, not expressly reserved, but because it has been found difficult, if not impossible, to mark the powers themselves, with precise, unequivocal limits.

The laws of the constitution, as Mr. Paing has justly observed, are to the government what the laws made by the government, that is the civil laws, are to a court of judicature. A court of judicature is bound by the laws, but has not the power, either to make or alter them. In like manner, the government, that is, those organized bodies, who are entrusted with the powers of government, are bound by the constitution, but have no power, in themselves, to make, alter, or control, any of its laws.

The necessity of laws, for the happy regulation of social and civil intercourse, has already been observed. In a scene, where there is a complication of rights, to be reconciled and secured, a great variety of
passions,

passions, to to be restrained and directed, the necessity of constitutional laws, agreeably to which the powers of government shall be exercised, are no less obviously necessary.

The constitutional laws ought to have a certain relation to the laws of nature, and to be founded in principles derived solely from those laws. From the same source are to be derived the operative principles, of the constituted powers, and those principles, by which they are limited, restrained, and directed to the ends of their institution. To give activity to these powers, the constitution ought to designate, not the persons, who shall be entrusted with the exercise, but the mode of their appointment, and in what manner they shall be amenable for their conduct in the administration. From the manner in which the constituted powers are exercised, and the immediate objects of their exertion, naturally arises a division into a legislative, executive, and judiciary. It is the business of the legislative to form such laws as may, in a due proportion, direct the actions of the whole, to the pursuit of public measures, and interests; as may unite the forces of the community, and direct them to the attainment of those important objects of public utility, or public
lic

lic necessity, to which the united force of the whole is alone adequate. It is their province to enact such laws, for the regulation of individual conduct, as may prevent an interference of individual claims and interests, and secure right and justice to the citizens in their private intercourse. Under the same head comes a provision, for the ascertainment and reparation of injuries, whether public or private, and for securing a general observance of the laws, by adequate sanctions, by penalties to be inflicted for every neglect or violation.

The business of the judiciary is to decide on the laws, by interpreting, and applying them to particular cases, and to give precise information, upon whom, in what degree and manner, and to what purposes the executive power shall be exercised, either for the reparation of injuries, or the punishment of offenders.

It is the business of the executive to carry into effect, the decisions of the judiciary, in the manner prescribed by the legislature, and the constitutional laws. To this branch it belongs, in like manner, to carry into effect many regulations, both of the legislature and of the constitution; and to represent the individuality of the community in public transactions.

There

There are very obvious reasons, why these powers should be committed to separate departments in the state, and not be entrusted unitedly to one man, or body of men. Different abilities are necessary for the making, judging, and executing of laws. They require the exercise of different powers, faculties, and knowledge. No one man ever had a sufficient extent of abilities, or versatility of genius, to attend to the duties of all, at one time, or in a quick succession. Such a union must frequently occasion a confusion of principles, and remediless violation of rights. To commit their exercise to a single man, or body of men, essentially constitutes a monarchy, or aristocracy, for the time being. By giving them the power of avoiding all constitutional enquiry, it places them above a sense of accountability for their conduct. They have it in their power, either in the enacting, the interpretation, or the execution of the laws, to screen themselves, and every member of their body, from account or punishment. The situation itself suggests to them, views and interests, different from those of the people, and leaves no common judge between them. It places them, in respect to the people, in that state of independence, which is often called a state of nature. In
such

such case, the people, hopeless under oppression, sink into a state of abject slavery, or roused to a sense of their injuries, assume their natural right, in such situation, oppose violence to violence, and take exemplary vengeance of their oppressors. In a government so constituted, the frequency of elections, can only aggravate the evil. The rulers, with all the powers of government in their hands, will find every instrument of corruption and factious violence devoted to their service. They will always have a hope of continuing themselves in administration. Should there happen a change of men, a change of measures, if attempted, would be of short continuance; the same situation, and the same motives, would, sooner or later, produce the same fatal effects.

To enter on a public investigation of the conduct of their predecessors, would be to set an example against themselves.* In such a confusion of powers, should any regular attempt be made to call the rulers to account, the immediate agents, and the immediate causes of the evils, would prove of difficult investigation. Mutual recriminations and powerful intrigues, would

L gene-

* The history of the revolutions in the British Ministry, who, in this respect, are in nearly the same situation, confirms the truth of these remarks.

generally divert the enquiry from the proper objects, and devote only the innocent or the feeble to the vengeance of the law.

A separation and precise limitation of the legislative, judiciary, and executive powers, with frequent, free, and uncorrupted elections, is the only remedy for these evils. Those who exercise the legislative power, must be subjected to their own laws, and amenable for a violation, equally with the plainest citizen. They must, by the express provision of the constitution, be confined to the consideration of general laws, and forever excluded the right of enacting particular penalties, privileges, or exemptions. Such partial laws are the first beginnings of an attack on the equal rights of man, and a violation of the laws of nature. This provision, however, should not extend to prevent the establishment of companies, by act of legislation, for the purpose of transacting certain business, or of prosecuting certain enterprises, to which the powers of individuals, from the nature of the thing, are incompetent. In the establishment of companies for such purposes only, a new power is created, but the right of no individual is infringed. Neither should it extend to a prohibition of forming laws for the encouragement of useful knowledge. Authors of books, by
which

which useful knowledge is disseminated, and of those inventions, which facilitate the labors of life, are entitled to the fruit of their own industry, and of the application of their powers, equally, with other citizens. But such is the nature of their productions, that, without a legislative interference in their favor, they must remain wholly at the mercy of others.

The legislature may proceed to the declaration of tyrannical laws; the judiciary to the pronouncing of unjust decisions; the executive furnishes the immediate instruments of tyranny and injustice. The executive is, in all cases, the ultimately efficient power. It is, therefore, very necessary, that the executive should be limited, with as much precision, as the nature of the power will permit, and the acts of all its ministers, rendered as conspicuous, as may possibly be, or, at least, of easy investigation, and the ministers themselves made amenable to the ordinary, or constitutional tribunals, for every abuse.

To prevent both legislative and executive abuses, the intervention of an independent judiciary is of no small importance. To the judges, the ministers of this power, it belongs to interpret all acts of the legislature, agreeably to the true principles of the constitution, as founded in the princi-

ples of natural law, and to make an impartial application, in all cases of disputed right. By this provision, the rights and interests of the legislative and executive branches will be kept in union with the rights and interests of the individual citizens. All will be equally exposed by the same unjust laws, or amenable for an arbitrary execution. The members of the legislature, cannot, from the nature of their functions, be amenable, in their legislative character, to any tribunal, but that of public sentiment. The case is different with the members of the executive and judiciary. They may, with propriety, be subjected to trial, for a violation of their trust, at the bar of a constitutional tribunal.

It may be observed, that a separation, and precise limitation of the powers of government simplifies the duties of its ministers. All their acts are, thereby, rendered distinct. Enquiry is facilitated, and abuses readily traced to their criminal causes, the particular agents. In addition to this, it gives a degree of energy to the public sentiment. Public approbation and censure, when directed to a number of men, of whom some are known to have acted well, or ill, but the particular agents are concealed, lose much of their force. The
guilty

guilty hide their blushes in the crowd. Guilt, or rather the sense of guilt, is diminished in proportion to the number of associates.

The better to secure the accountability of the individuals in the great departments of the government, not only ought the powers of the several departments to be, precisely, and distinctly, limited ; but the several members ought to be incapable of holding a place in more than one of the departments, at the same time. The members of one department may be eligible to a place in another ; but the acceptance of the latter ought to vacate the former. A separation into distinct bodies, will be of little avail, if those bodies may be composed, principally, of the same individual members. The division and limitation of powers, will, in this case, be merely matter of form. They will remain, substantially, united.

If the above observations are well founded, the executive branch ought not to have a negative, or any directing power, in the act of passing laws. The executive may, however, within certain limits, well have a deliberative voice. Those, who are conversant in the execution of the laws, will be the centre of information upon that subject. They will, more readily than
L 3 others,

others, foresee any difficulty, which may arise in the execution. Of such information the legislature ought to be availed.

The same observations, nearly, will hold true of the judiciary. The judges, from the nature of their official employment, are informed of the difficulties, which arise in the interpretation of the laws, and of those cases, in which they prove deficient, unequal, or unjust in their operation. Such information is highly necessary to the legislative body. The principal members of the judiciary, may, when the particular duties of their office will permit, be, with propriety, united with the head of the executive department, to form a council of revision upon all laws proposed to be passed by the legislature. The business of this council should be confined, solely, to objections. It should be their duty to give information of all difficulties, which they foresee will arise, either in the interpretation, the application, or the execution of the law; and to notice all inconsistencies, either in the laws themselves, or as they relate to the principles of the constitution. They should be allowed, in no instance, to propose any amendments, or to make any leading propositions, in the enacting of laws; but simply to state to the legislature, such objections, as they find to any law, with their reasons in writing. The

The information to be derived from this source, may enable the legislature to give a regular consistence to the laws, and a facility to their administration, not otherwise to be expected. Still, the legislature must be the sole judges, whether the information given coincides with the general interest of the community, and the principles of the government, or is dictated by particular views, or particular interests.

SECTION III.

Of a Balance constituted by an Opposition of Powers.—Locke's Constitution of Carolina.—Of other Checks.

MOST of the political writers of modern times, who have had any idea of a free government, have contended for a division of the legislative power. They would have, in the legislature, one body of men, representing the commonalty; a senate, representing the wealthy and more honorable part of the community, and the head of the executive, whether King, President, or Governor, representing the individuality or sovereignty of the state. These bodies,
for

for the purpose of maintaining an exact balance of the several interests in the state, are to have a mutual negative in passing all laws. The balance is to be supported, and the happiness of the people secured, by a mutual opposition of rights, interests, and powers.

Before we proceed to the head of *Elections*, let us attend, carefully, to examine this point.

To admit the necessity of such a balance, is to admit, that the laws of nature have indulged to certain classes of men different rights, and given them distinct interests in those rights, and that the maintenance of such rights, and interests, distinct, and inviolable, is indispensibly necessary to the happiness of the whole. This position is, upon our principles, wholly inadmissible. There are, indeed, inequalities among men. Some are stronger than others. Some have greater powers of mind. Hence proceeds an inequality of acquisitions, both in power, and in property. The strong have it in their power to trample on the weak ; the cunning, to circumvent the simple. But will any one pretend that they have a right to do this ? The rights of acquisition are equal and common to all. The laws of natural justice have laid it under this restriction, to use your own right,

right, that you injure not the right of another.* My right of property, which, originally, depends on my right of acquisition, is not injured, because my neighbor, by the application of greater abilities, or industry, has brought more of the goods of fortune within his right. If the law should give him a monopoly of riches, of power, of honor, and secure them to him in perpetuity, against my claims of justice and of merit, it would be a diminution, an unjust violation of my right. These are the darling principles of monarchy and aristocracy. Men are capable of these principles. They are capable of many vices. The former contribute no more to perfection in government, than the latter in moral conduct. It is, surely, much better, in the formation of a government, to prevent their very germination, than to maintain a constant struggle against their evil tendency.

In Great-Britain, the balance of power, in three branches, preserves, what of liberty is to be found among the people. That government consists of a monarchy, an aristocracy, and a democracy : that is, two powers, with distinct, and exclusive rights. These rights, as far as they are claimed to extend, place the claimants beyond the reach

* Sic utere tuo, ut alienum non laedas.

reach of one branch of the laws of nature, the law of accountability to man. If these orders have been established in a state, and are to be supported, they must be placed in an equal balance. Power must be opposed to power; authority to equal authority, as a mean of self-defence in each. The prerogative of the crown, and the privileges of the nobles, are ingrossments on the rights of the people. They are hereditary, and deemed to be inherent in the very blood. Their honors, their privileges, and their crimes, as rulers, and as men, are held to be above the judgment of the people. The powers of the monarch, and of the nobles, which are exercised upon the same subject, the people, often interfere. The restraint of one, is the enlargement of the other. Both are equally out of nature. It is rightly considered as a matter of indifference to the people, who has the exercise. Their claims of right and of power are placed in opposition; and mutual enmity is the natural consequence. Every compromise of their interests, every temporary union of their powers, is a conspiracy against the people; who, at times, are justly provoked to assert their injured rights, against the usurpations of both. As the rights of the monarch, and of the nobles, are hostile to the rights of the people, the
people

people are naturally and justly enemies to both. Thus there is constituted in the government, a perpetual war of each against the other, or at least, an armed truce ; a truce attended with constant negotiations and shifting combinations, to prevent mutual destruction. Each party, in rotation, unites with its enemy, for mutual defence against a more powerful enemy.

The history of the English government, from William the Conqueror, down to the present time, is an incontestible proof of these truths. It is little more than the history of the usurpation of the king, and the nobles, upon the rights of the people ; struggles between the king and the nobles, for the greatest share in the usurpation, and the opposition of the people to both. What a scene of treachery, faction, and all the horrors of civil war, the legitimate offspring of such a government, does their history constantly exhibit to our view ! From the improvement of the social virtues, these contests have, indeed, lost much of their ferocity. They have assumed a milder tone. What was formerly attempted by open violence, is now effected by the more silent, though not less fatal means of corruption. It is, as the pestilence that walketh in darkness succeeding to the destruction which wasteth at noonday. The

The democratic branch, the representatives of the people, are the depository, and from their interest, the sole guardians of the rights of the people. But with these, from a fatality attending the nature of the government, and the frailty of human nature, temptations to betray their trust, and to desert to the enemies of the people, too often prevail. False notions of greatness, universally adopted; hope of rising to the higher orders; and the desire of riches, which are the necessary scaffolding of false greatness, open wide the door to corruption. Hence means are found to silence the boldest champion for liberty, and to lay prostrate the stubborn virtues of the patriot. Why should the people go so miserably out of the way, to erect powers hostile to each other? which cannot subsist with the common liberty, and which are dangerous to virtue itself?

It has long been a subject of wonder to the philosopher, and a matter of triumph to the friends of despotism, that those writers, who have gone farthest in their researches into the nature of man, and in discovering the true principles of civil and religious liberty, have found their theories incapable of being reduced to practice, in new establishments.

Locke,

Locke, who was one of the first philosophers of his age, and the champion of liberty, was employed by the Lords Proprietors of Carolina, to form the plan of a constitution for their government. Though the friend of liberty, and of mankind, he had conceived no idea of any other security to the enjoyment of liberty, than what was to be found in the constitution of England. He seems not to have reflected, that hereditary prejudices, in favor of ancient customs, and even of ancient names; a habit of thinking and acting in a certain train, in measures, to which men are familiarised, render those things easy, in an establishment, venerable for its antiquity, which are utterly impracticable in new institutions. He, therefore, with a view of establishing and securing that liberty, which he esteemed the greatest happiness of a government, created an opposition of powers and interests under names and titles, different from those, to which the people had been accustomed in England. The Lords Proprietors were the Sovereign; the newly created Nobility constituted an hereditary House of Peers, and the people had their Representatives in a House of Commons.

The exotic and unaccustomed names of Landgrave and Cacique, conferred on the Nobility, instead of Earl and Baron, to
M which

which habit had annexed a degree of veneration, had an influence to prevent their attaining any portion of that dignity, which the Peerage, under the shadow of the Monarch, enjoy in England. In this new situation, the opposition of interest, which had been established, instead of proving a security to liberty, produced nothing but violent animosity among the contending parties, and a grievous oppression of the people. The event soon discovered the system to be out of nature, and wholly impracticable in its operation. Had Locke been fully acquainted with the laws of accountability, and the means of giving them effect in the administration of government, would he have fallen into such impracticable absurdities, in his constitution of Carolina? It is possible, however, that he might have been embarrassed by the particular views of his employers, the Lords Proprietors.

In the difficult passage from error to truth, perhaps, the state, which succeeds the almost total ignorance of savages, and which precedes a more general knowledge of the relations of nature; a state, in which the infant and feeble voice of the moral sense, is frequently lost amid the violence of contending passions and appetites, may require, at least, it may endure

a government founded in violence, and supported by opposition. The history of Athens, of Sparta, of Rome, and of many of the more modern states, exhibits the bulk of mankind in this character. A few men have arisen in every nation, great beyond their age, the instruments of Providence for the improvement of the world. To these, modern times are indebted for the first dawnings of science. As the benefactors of mankind, their names will be had in perpetual remembrance; but the history of their times informs us, that they were able to communicate little of their knowledge to the body of the people; to moderate the passions, or to influence, in any considerable degree, the general sentiment. The governments of those times were as ill balanced, as the passions of the people, and for the same reason. People, in such a state, are keenly sensible of the present. They are, in general, little capable of adjusting combinations, or of discovering any, but the most obvious relations and tendencies. From the character of those times, we have reason to conclude, that the violence of government, and the violence of the people, who often destroyed one set of tyrants, to make room for another, and were often guilty of greater abuses, than those, which they attempted

to reform, did not proceed from the want of a balance in government. It proceeded from a want of knowledge, from the violence of the passions and appetites, the weakness of the moral sense, and consequently the sense of accountability, which rendered it difficult, if not impossible, to fix any sufficient barrier against the tyranny of rulers, or the licentiousness of the people. Certainly, arguments, drawn from such a state of society, and of manners, in favor of a balance, constituted by an opposition of powers and interests, ought, with caution, to be applied to the present state; which is, in so many respects, very widely different.

At this day, great improvements in science, in manners, and in morals, have taken place. The art of Printing has rendered the means of diffusing knowledge, almost universal. Science is no longer confined to the recluse. Useful knowledge, and useful science, are attainable by the mass of the people. Improvements have literally begotten improvements. The knowledge of many things, which, in former times, was the fruit of long and laborious application, is now imbibed almost with the milk in infancy. Many an ancient sage, in the warmth of his philanthropy, would have exulted, could he have fore-
seen,

seen, that in America, and in many nations of Europe, the plain husbandman would, at this day, possess more knowledge, applicable in human life, more useful science, than was to be found in all the schools of antiquity.

In this state of imperfection, the abuse of power will never be wholly prevented; but, when the idea of inherent powers, exclusive rights, and separate interests, shall, in the mode of betrustment, and the conduct required of rulers, be no longer suggested to their minds, temptations to abuse will be, in a great measure, removed.

A frequent rotation in all the offices of government, has, by some statesmen, of no inconsiderable authority, been esteemed one of the most effectual provisions against an abuse of power. The advocates for this institution urge, that a rotation in offices has a powerful tendency to prevent the danger, which constantly arises from an inveterate habit in the exercise of power, in any man, family, or set of men, on the one hand, and the habit, which the people, on the other, are too prone to acquire, of directing their obedience to particular men or families, rather than to the laws and ordinances of government; that these habits become inveterate, in any way, are not sufficiently checked by the frequency of

elections, and always counteract the true principles of a representative republic. The experiment, though often made in the republics of ancient Greece, and of modern Italy, has never succeeded in preventing the abuse of power. On the contrary, an established rotation of offices has served rather to increase the rapacity of rulers, and to render the government but the more insupportable. The reasons of this effect, I think, are obvious. Where a rotation is established, there frequently will, in those, who are brought forward to office, be discovered the want of a thorough knowledge of the business of their trust, and a want of dexterity, which is unavoidable to persons in new employments. But this is of less importance.

An interest in the approbation of the people, and a strong sense of accountability to them, in all official conduct, is the greatest, or rather, the only effectual security against abuses in those, who exercise the powers of government. An institution, agreeably to which the greatest wisdom, the most distinguished patriotism, the highest integrity of conduct in a ruler, cannot entitle him to the proper reward of his virtue, an expression of the approbation of his fellow citizens, in his re-election to office, diminishes the most flattering interest, which
he

he ought to have in their favor, and in the same degree relaxes his sense of accountability to the tribunal of public sentiment. His interest is seen diverted into another channel. He no longer looks for a public reward, but hopes, either, that his crimes may escape detection, or that his rapacity and acts of oppression will furnish the means of stifling future enquiry. An enquiry will soon be found to be pursued with less zeal, among a set of people, who, while they succeed to the same offices, succeed to the same views, and the same interests. In a representative republic, every institution ought to be avoided, which has a tendency to deprive the citizens of a right of employing, at their election, except in cases of present incompatibility, in offices, men of known abilities, and experienced integrity, or which tends to diminish in the rulers, a strong sense of accountability, a perpetual interest in the approbation of the people.

Truth is but one. Errors are infinite. The knowlege of truth tends to unanimity of sentiment. Errors tend to endless divisions and factions. Banish mystery from politics; open every channel of information; call for investigation; tempt a discussion of measures, and the public sentiment will be the best criterion of what is right, and what is wrong in government.

Make

Make the members, both of the legislative and executive amenable to this tribunal. Subject them, by elections, as frequently as the nature of the case will permit, to the approbation or censure of the people. It will then be found unnecessary to have recourse to a rotation of offices, or to create hostile powers and interests among the rulers, that the people may watch in quiet, while their Lords are contending for the prize.

Although an opposition of powers and interests seems not to be admissible, upon any rational ground ; yet that there should be a division of the Legislature, into a Senate and house of Representatives, is undoubtedly an excellent provision. Public discussion and mature deliberation, in the enacting of laws, are indispensibly necessary. The Senate and house Representatives, should have equal powers. No law should pass without the concurrence of both.

Should one body, through the prevalence of some secret influence, or of popular prejudice, pass too hastily upon measures, the other might calmly arrest the decision, and prevent the danger, which might arise from too transient, or too partial a view of the subject.

There

There is another advantage, which may arise from a division of the legislative body, independent of the above consideration. That man, or body of men, who have formed any plan, are, in some measure, incapable of correcting the errors, and mistakes, which may, at first, have intervened. Their ideas, when arranged, flow easily and almost unavoidably in the same channel. Those errors and mistakes, will be much more readily detected by others. This I apprehend to be a very important consideration, in the legislative institution. Still the negative power between the two Houses, is not to be esteemed a direct power of controul, for the purposes of mutual defence. It is designed to produce amicable discussion, and a more thorough investigation of public measures, and a general accommodation of the laws, to the manners, sentiments, and interests of the people. It is claimed by the citizens, to be interposed for their sake only, not for the sake of the rulers. It is necessary, that each body be satisfied of the goodness of a measure, before it be adopted. If either be dissatisfied, it is to be no farther pursued.

This is the natural consequence, when two bodies have equal powers. Whenever they disagree, there must be a mutual
nega-

negative. If one can finally determine a measure, against the opinion of the other, their powers are no longer equal. Their deliberations will not be mutual, nor will they long continue to be amicable. The superior body will bear a difference of opinion, with a degree of impatience. *Sic volo*,* will always be the most ready, the most decisive answer.

S E C T I O N IV.

Of the Election of the Members of the Legislature.—Qualifications of Electors, and Candidates.—Accountability of the Legislature—how secured.

THE exercise of the legislative power by representation, is an improvement of modern times. In all the republics of ancient Greece, and in Rome itself, where the citizens had a share in legislation, every freeman was a member of the legislature, & gave his suffrage personally, in the great assemblies of the people. This brought together a body too unwieldy, even in the smallest states. In states of greater extent,

* It is my pleasure.

tent, where the citizens were almost innumerable, with the peculiar manners, the limited knowlege, and partial views of their times, they formed a heterogeneous assemblage of sentiments, passions, and interests, which bade defiance to all hope of compromise, by means of rational discussion.

Those, who are little conversant in reasoning, are yet capable of feeling. Accordingly, we find, in the public harangues of their most celebrated orators, and statesmen, very little attention to investigation. All their powers of eloquence, were directed to the passions, and sentiments of the audience. The whole vigor of the soul was collected to this point. The instructions contained in their public orations, serves principally to mark the state of knowlege, the manners, and public sentiments of the times. The glow of imagination, which they discover; the propriety and irresistible force of sentiment and expression, which wraps the whole soul in attention, have justly rendered them the admiration of succeeding ages. All this well accounts for the fluctuation of measures, in ancient popular governments. They have often, and with propriety, been compared to fluctuations of the boisterous element. A republican government

government upon this model, must, in a large state, be very inconvenient, and exposed to perpetual revolutions.

It has been the opinion of many writers, that a democracy can be adequate only to the government of a small territory. They have held, that in this species of government, population must be stinted, or the number of citizens, who have the right of suffrage, limited. The first is a very discouraging consideration to society. The latter constitutes a more or less numerous aristocracy. Montesquieu has adopted this opinion. He seems not to have conceived, that a government purely democratic, could act wholly by representation. In his time, I believe an instance of this kind had not existed in any independent state.*

Speaking of the constitution of England, the same author observes, "The great advantage of representatives, is, their being capable of discussing affairs. For this, the people at large are very unfit, which is one of the greatest inconveniencies of a democracy." Representatives, chosen from the various parts of the community, agreeably to a just apportionment, are, not only, capable

* The colonial governments of Connecticut and Rhode-Island, before the late revolution, were, in their internal administration, pure representative democracies.

pable of discussing the affairs of the nation, be it ever so extensive or numerous, but they bring to the discussion more knowledge of the general and particular manners, interests, and sentiments of the people, whose happiness is alone concerned in their deliberations, and dispositions more congenial to those manners, interests and sentiments, than can be found in any other body of men.

The rights and interests of monarchy and aristocracy, ever exclusive of the rights and interests of the people, ever in opposition, are not less so in a large, than in a small state. In a large state, the objects of their oppressions and exactions are more numerous, and may, sometimes, by dividing, lessen the burden. But whether the state be great or small, the same exclusive rights, the same opposition of interests, the same oppressions, and exactions, exist in kind.

The first thing to be considered, in forming a legislative body, is the qualifications of electors, and the number and qualifications of representatives. These are not points of easy discussion. They have never been precisely determined. Some have insisted on a qualification in property. Others have extended the right of suffrage and of eligibility, to every acknowledged citizen.

In a democratic republic, in which every thing ought to tend to a certain kind of equality, property seems not to be a just criterion. The individual and social rights of man, are the subjects of legislative discussion, and to these, the interests of the community are to be referred. The right of property is one of those rights, and gives rise to a very extensive interest among men. It is a right, however, which, if it meet a too partial indulgence, tends to a dangerous inequality of influence, and with the power and interest, suggests to the proprietor the idea of infringing the rights of others with impunity. The interest of science, of industry, of commerce, and of the mechanic arts, have an equal claim on society. The proper encouragement of these, tends to a more equal distribution of the goods of fortune, and to correct the unequal influence of wealth. In a state where, through the prevalence of corrupt principles, the whole property is accumulated, and perpetuated in the hands of a few ; where the great mass of the people are reduced to a state of dependence, servility, and meanness, from which they can never hope to emerge, but by the destruction of their oppressors, a general right of suffrage, would be dangerous to the few, and for a time, even to the people themselves.

selves. In most, if not all the governments of the United States of America, where the law equally regards the rights of the rich and the poor; where few are to be found without property, and fewer still without a well grounded hope of obtaining it; where industry and economy rarely fail to procure a competence, and often lead to opulence, no ill consequences are to be feared from a general right of suffrage.

Disqualifications will, however, in some cases, be found necessary. It will, at least, be found expedient to exclude, both from the right of suffrage, and eligibility, those, who, for want of age, may be supposed to be wanting in discretion. Certainly the interests of virtue and of the public require, that those should be excluded, who, by their crimes, have manifested a disposition totally corrupt, and by their conduct declared to the world, that they are no longer to be trusted.

I am unable to persuade myself, that any distinction, in point of qualifications, ought to be made, between electors and candidates. I say in general, for a distinction of age, which to abilities adds experience and maturity of judgment, may well be admitted. There is nothing invidious in the distinction. It is an honor yielded by

mankind, to a certain degree, with a conscious approbation of virtue. Other qualifications are mostly invidious. They introduce, in some measure, a distinction of classes. They excite a degree of haughtiness in the candidates. The electors feel themselves degraded, and that their class, notwithstanding their right of suffrage, is unrepresented. If a character for integrity and abilities are the only qualifications for a candidate, they will be more assiduously cultivated. These are qualifications, which alone are useful to the people, and of these the people are the only competent judges. The choice of a worthy character, reflects honor upon themselves, which they enjoy with the more satisfaction, as they are sensible of no restraint or limitation in their choice. From these considerations, I apprehend, that the right of suffrage and of eligibility ought to be the same, and limited by no qualification but that of age. If, in any state, other qualifications shall be found necessary in either, the necessity must have arisen from some antecedent defect in the constitution and laws.

The number of representatives seems less capable of a precise limitation. The extremes are very discernible, but they are very distant. Too numerous a representation verges towards the inconvenience of

an

an assembly of the people. It incumbers discussion, and gives an ascendancy to particular passions, which often, in a numerous assembly, through a sympathetic impulse, pervade the whole body, like a shock of electricity, and irresistably influence the decisions of the moment. On the other hand, if the representative body are too few in number, their measures are liable to be dictated by limited views and partial interests. Possibly we can go no farther than to say, that it ought to be sufficiently numerous to probably comprehend all the passions, sentiments, and interests, which have a national influence.

These observations apply equally to the House of Representatives and the Senate. The better to equalize the representation for the House, the State ought to be divided into as many districts as there are representatives to be chosen. Where no local, or more powerful reason opposes such division, the districts should be apportioned by the number of inhabitants. This will, in general, give the most equal representation of interests. The voters too will act understandingly, and with a personal knowledge of the candidates. Where a number of representatives are assigned to a district of greater extent, every engine of intrigue is commonly put in motion, and the repre-

representatives are chosen, by the prevailing interest of the district, to the exclusion of every other interest. The mode of election proposed for the House of Representatives, gives opportunity for an advantageous modification in the election of a Senate. The Senators are to be representatives of the people, no less, in fact, than the members of the other house. It is a very good idea, that the Senate shall be considered as a national council. This suggests a distinction of age, to give maturity to their deliberations. Public measures, before they are adopted, ought to be considered in every point of light, in which they can affect the passions, the morals, sentiments, and interests of the community, both general and particular. While they provide for present accommodation, they ought not to lose sight of future improvements. To secure a more deliberate discussion, and a more calm investigation, not only ought the warmth and inexperience of youth to be excluded from the Senate, but the members should be fewer in number, than those of the House of Representatives. While the House of Representatives, actuated by all the passions and sentiments, in turn, give a vigor and national spirit to the measures of government, any precipitation into which they might fall, will be prevented
by

by the firm composure of the Senate. In proportion as they are fewer in number, they will be chosen by larger districts. This will produce a different combination of the interests, which they represent, and exhibit a different and more collected view of the objects of legislation.

To prevent, in the members of the legislature, every idea of an independent power, or of property in their appointments, they must be chosen for a limited time. A period must be fixed, when their exercise of power shall cease, and leave them only that pre-eminence above their fellow-citizens, which they derive from the public approbation. The period must be sufficiently long for completing the ordinary routine of business. A year may, in general, be the most convenient time. Perhaps, in larger states, the nature of the ordinary business, the magnitude of the objects which demand the attention of the legislatures, and the subjects to be discussed, may require a longer period. Reasons may likewise exist for fixing different periods for the members of the Senate, and the members of the House of Representatives. In each, some period ought to be fixed, beyond the power of the Legislature to alter. Such a provision will, on every occasion, recall their attention to the interests and happiness of the people.

people. It will place their accountability, constantly, in view. It will fix them in a dread of the censure, and give them a most flattering interest in the approbation of the people.

To render the public sentiment a more rational, and a more powerful check upon every department of government, it is essential, that there be, in the constitution of every free state, an effectual provision for the dissemination of useful knowlege. No knowlege can be more useful to a people, than that, which enables them to manage, or, at least, to judge, with propriety, of their own and the public interests. "Let liberty be attended with knowlege." It removes the temptation to abuse, by taking away the hope of successful imposition. To this end, common schools, as well as public seminaries, should be considered as an important object of legislative attention. Let it also be a sacred stipulation, that all debates in the Legislature shall be open. Let effectual measures be taken to facilitate their publication in course, and to procure them a speedy circulation among the people. Let there be no restraint upon the liberty of the Press, no check upon public or private discussion, but what is imposed by the manners, morals, taste, and good sense of the age.

SECTION

SECTION V.

Of the appointment and accountability of the Executive and Judiciary.

THE executive is the ultimately efficient power in government. For the sake of dispatch, of unity of action, and of representing the individuality of the state, in transactions with other nations, this power ought to be vested in one person, whom, for distinction, we will call the President.

Some have thought, that the election of the President might, with the greatest safety, be entrusted to the Legislature. Others have held, that it should be the sacred right of the people. There are unanswerable objections to the exercise of this right by the Legislature. It gives an idea of dependence of the President on the Legislature, and intercepts his accountability to the people. All elections by the representative body, are liable to intrigues and coalitions, which greatly influence public measures. This evil is increased, in proportion to the importance of the election.

An upright discharge of the duties of the executive, is the most honorable of any in the state ; an abuse the most dangerous, and in none, are the temptations so powerful. It ought, therefore, to be guarded against with every rational check. At the same time, it must not be so incumbered as to clogg its necessary activity. The good or bad conduct of the executive is, in most instances of internal administration, immediately felt by the people. To prevent any hurtful coalition, between the executive and the legislative body, and to subject the President to the controul of public sentiment, his appointment should be by periodical elections of the people. In more extensive and complicated governments, such as that of the United States, this mode of electing the President, may be inconvenient, or even impracticable. When this shall appear, some other provision must be made ; but care must be taken, to prevent all legislative interference, in the appointments, unless, which will sometimes happen, no choice shall have been made, in the mode prescribed, and to make it depend as much as possible, on the sentiments of the people.

The business of the executive, is too extensive and various to be performed by one man. Many of its duties must be performed

formed by subordinate Ministers, who are to be considered as assistants to the President. The appointment of these properly falls within his province. He will be responsible to the public, for their character and abilities, though not for their crimes. He ought, therefore, ordinarily, to be entrusted with their removal.

Besides the duties of the executive, already mentioned, there are other duties, very necessary to an orderly and economical arrangement of public measures. It will, at all times, be the duty of the President, to inform the Legislature of the situation of public affairs, of the event of measures, which have been adopted, and to recommend to their consideration those subjects, which demand their more immediate, or more particular attention.

According to the ordinary routine of official business, it will be the duty of the subordinate Ministers of the executive, when required by the Legislature, to give a clear and just account of the affairs of their several departments; to make proper arrangements in those matters, which are committed to their charge, and to accompany them with all the necessary information, which may assist that body to adopt and pursue a regular system, in their internal economy, and to conduct with propriety

ety and good faith, as well toward individual citizens, as in their intercourse with foreign powers.

Happily for mankind, it has been found that the exercise of the executive power, is sufficiently capable of precise limitation, by known and established laws. Its Ministers may, therefore, be subjected to trial, before a constituent tribunal, to removal and punishment, for male-administration. Impunity should, on no account, be annexed to office or dignity. So far from consisting with the good of the community, it is directly opposed to its interest and safety. A strict adherence to these principles, in the constitution and administration of government, will secure as great a check upon the abuse of power, as the imperfection of human institutions will admit. It cannot be too often inculcated, that, to indulge, or rather to create an opposition of interests, on which to found an opposition of powers, will, if we may rely on the experience of the present and past ages, always prove ineffectual to the end of restraint, and in a greater or less degree, subversive of the rights and liberties of the people.

An executive council, whose advice may assist the President, in matters of general importance, or doubtful issue, appears to be

be a wise and necessary institution. From this council, the members of the judiciary are carefully to be excluded. For this exclusion there are two substantial reasons. The first has already been mentioned; the necessity of a separation between the legislative, executive, and judiciary, that each may be rendered distinctly accountable. The second is, that their advice will pre-occupy questions concerning the legal and constitutional rights of the citizens, in which the administration of the executive may be involved, and of which, in their official capacity, they are the only proper judges for redress.

There are nearly similar reasons against the admission of either branch, or any member of the Legislature, to this council. The objections are, that it blends those powers, which, as we have seen, ought to be kept distinctly separate. It shifts the responsibility from one to the other, and leaves it less clear, who is to be accountable. It is of importance, that there should be an enquiry into the conduct of public officers; that prosecutions should be brought forward against the guilty; and that there should, somewhere, exist a constitutional court for their trial. The enquiry, prosecution, and trial, ought, from their importance to the community,

O

and

and the character and situation of the parties, to be more public and solemn, than those, which are established in the case of common offenders. The National Representatives have been thought the most proper board to institute such enquiry, and to bring forward the accusations of the public; and the Senate the most proper court for the trial of such accusations. Though this appears not perfectly consistent; yet probably no better provision can be made. The introduction of an independent tribunal, for the trial of impeachments, would have greater inconveniences, and lead to endless consequences. If such be the provision for the accusation and trial of executive officers, certainly it is not very consistent, that the same men, or the same body of men, should advise, and afterwards, on trial, decide upon the conduct, which had been adopted and pursued in consequence of their advice. It will often be proper for the Legislature to advise and direct the Executive to the pursuit of some national measures, which may be necessary, or expedient. Their previous approbation may give weight to the measures, and a facility to the execution. This advice, however, should be general, or, in matters, which are considered as discretionary, with the Executive. It should ne-

ver extend to those particular instances of conduct, which may become the ground of an impeachment. Upon these considerations, would it not, if an Executive Council be necessary, be more consistent, that it should be composed of a distinct body, elected in the same manner as the President, and in like manner amenable for their conduct?

The situation of the Judges, or Ministers of the Judiciary department, is somewhat different from that of the others. The integrity of their conduct has a great influence upon government. It is indispensibly necessary to an impartial administration of law, and the security of public and private rights. Their decisions are, mostly, local, and of individual rights; but the precedents established by their decisions, become general rules for the interpretation and application of the laws, which follow the principles of the government. In republican governments, the law is to be interpreted, with a spirit of equity, impartiality, and moderation.

In the mode of performing the duties of the Legislative and Judiciary, there is a very material difference. In making laws, a great regard must be had to the circumstances, manners, and sentiments of the people, as well as to the principles of the

tution. The laws must be the best, which the people can bear. In judging, whether between individuals of the people, or between private persons and public officers, a strict regard is to be had to the very right and justice of the case, agreeably to the principles of the constitution, and the laws of the land. The Judges ought not to stand in awe of the frowns of power, or to be influenced by temporary smiles of popular favor. The abilities, integrity, and independence of the Judges, is a shield, both to the rulers, and to the people. They give a steady nerve to the mild energy of government, and ultimate security to private rights. That kind of accountability, therefore, which is supported by popular elections, and which is proper for the members of the Legislature, is not proper for a Judge. From the interest, which men of property and influence might expect in future decisions, the people would, in the choice, be liable to be mislead in their judgment of characters. The same observations will hold of a legislative appointment, in addition to what was above observed of elections, in general, by the Legislature, that they give rise to intrigues and collisions hurtful to public measures. In popular appointments, no one holds himself responsible for the character of the
person

person appointed. In the Legislature, responsibility is, in a great degree, lost among numbers.

The appointment, or at least the public nomination, of the Judges, ought to be entrusted to the President, or the head of the executive. His conduct is constantly, and singly, exposed to the public view. He will hold himself fully responsible for the character and abilities of those, whom he appoints to office.

- To secure them in that degree of independence, which shall place them above the temptation of a bias, they should hold their office during good behaviour. Their salaries should be fixed beyond the power of the Legislature to alter, at least to diminish, during their continuance in office. For corruption, or male-administration in office, let them be liable to removal by impeachment in a constitutional way.

There may, however, be some things, in the conduct of a Judge, which go to his character, and destroy that respect and public confidence so necessary in securing a ready acquiescence in the decision of the Judiciary, and a prompt obedience to the laws. They may, nevertheless, be of such a nature, that they cannot be made the subject of an impeachment. To remedy this evil, which is, sometimes, a matter of

great consequence in government, and to impress on the minds of the Judges, a sense of the necessity of an unblemished integrity of conduct, they might be removable on an address to the Executive, from both branches of the legislature. To prevent the effect of envy, of intrigues, and the popular frenzy of the moment, it should be made a matter of deliberation. Let it be necessary, that two thirds, at least, of each branch concur in the address. These provisions, I apprehend, will hold the Judges sufficiently accountable. As was hinted above, their situation, different from that of other rulers, does not require, or even admit, of the same kind of accountability. Their unjust decisions may render them odious, may subject them to trial, punishment, and removal; but can add very little to their own emolument or power.

SECTION VI.

Of Juries.

THE institution of Juries is of great antiquity. The *Selecti Judices** of the Romans, and the *Dicastæ* and *Heliastæ*† of the Greeks, had in several respects, a near resemblance to modern juries. They subsisted in one form or another, among all the northern nations of Europe, and were by them introduced into all the governments of their conquests. They have, however, been preserved in very few. They are a powerful support of civil liberty, and cannot long exist in a government wholly arbitrary.

Among

* *Selecti Judices*—Select Judges—At Rome, a certain number of citizens, were, by the consent of the parties, selected to judge in each cause. The Judges decided on facts only. Questions of law were referred to the Tribunal of Decemvirs, who presided in trials, under the direction of the Prætor.

† The *Δικασται* and *Ἡλιασται* were judges in several courts at Athens, in which the Archons, who were called *Thesmothetæ*, or Presidents of Justice, presided. All citizens of Athens had a right, on taking the oath prescribed, to judge in these courts, and the number of judges in a cause, sometimes, amounted to 500.

Among the English, their history does not reach the antiquity of the institution. It has there been improved, and with the democratic branch of the government, continues the grand paladium of their liberties. From them it is derived to the federal Americans, and makes an important part of their civil constitutions.

In mixed governments, like that of Great Britain, the intervention of juries, both in the prosecution of crimes, and in decision of private rights, is a principal security to the subject, against the dangerous power and influence of the monarchical and aristocratic branches. It is equally necessary in a republic, but for reasons somewhat different.

In a republic, the powers of government are supported, not by force, but by the sentiments of the people. It is necessary to cultivate a sentimental attachment to the government. The powers of government are visible only in the exercise. The mode, in which they are exercised, either invigorates or weakens the sentiment. The exercise of power is not, in general, directly agreeable to those, who are the subjects of it. The administration of justice, without a view to the consequences, is rather austere and forbidding,
than

than amicable and attractive.* As more men are capable of feeling, than reasoning, and all feel before they reason, the first view is rather unamicable. The Ministers of justice are the objects of these feelings. The ideas of unamicable severity, daily impressed on the minds of the people, are not easily corrected by reasoning on the consequences.†

Justice is administered for the redress of some evil, either public, or private. The evil is past, and sometimes uncertain, or at least of difficult investigation. The evil, which is inflicted by the sentence of the Ministers of the law, is present and certain. The people cannot, consistent with an impartial administration, have a direct controul over them. These considerations have, more, or less, a tendency to diminish that sentiment of attachment, which

* Justice, when considered as a private virtue, that is, the rendering to every one his honest due, is directly amicable; when considered in the distribution of punishments, it is not so. The mind is reconciled to it, and acquiesces in it, from a view of the consequences merely, unless, when the passion of revenge excites a desire of retaliation.

† Hangmen and public executioners are universally detested. The first impressions, which their actions make on the mind, impressions of inhumanity, and cruelty, are never effaced by reasoning on the justice of their actions, or their necessity to society.

which is so necessary in a republic. The institution of juries provides an adequate remedy. In this institution, I comprehend both the grand jury, who are to pass on the accusation, and find it supported, before any person accused, can be put on his trial, and the petit jury, who pass on the final trial, all questions, civil and criminal.

In the administration of criminal law, the institution of a grand jury has a very leading influence, in a free government.† To guard the innocent from the infamy and oppression of a public accusation; and without partiality, without favor, to bring forward the guilty to trial for their crimes, constitutes the principal duty of a grand jury. Taken from the body of the people, and having, in the prosecution of offences, no interests but the peace and welfare of the community, as far as they are secured by the prevention of crimes, they are placed as a shield between the accused, and the interested passions, or malicious attempts of private prosecutors. This intervention between the people and the officers

† I do not recollect any institution among the ancients, similar to that of a grand jury; nor do I recollect to have met with it in any of the modern governments, that of the English excepted. It was established among them before the conquest.

Black. Com. iv. 302.

ficers of the law, who, from the nature of their office, may, sometimes, be suspected of interested views, or at least of a want of feeling, gives a facility to the execution of criminal law, and reconciles to the sentiments of the people, the necessary punishment of offenders. The punishment of the guilty, if, from an oppressive partiality in the prosecution, or an undue rigor in the execution, it meets not the acquiescence of the people, can have no salutary effect in society.

It may be made a question, how far persons injured, ought to be admitted to prosecute for the end of punishing. I apprehend, this will depend much on the state of manners, and the principles of the government. In a government, supported, in a great measure, by force, and in a state of manners, in which the mind is highly inflamed by private injuries, and the passion of revenge, is satisfied with nothing short of personal retaliation, it may be necessary to permit the person injured to prosecute his revenge, at law, to prevent the fatal consequences of private malice. To restrain personal revenge, and subject it to general laws, is a great point in the progress of society. Still, as prosecutions for the end of punishment, by the party injured, have a direct tendency to perpetuate

uate a resentment of injuries, and to make the law instrumental in the exercise of personal enmity, the practice, by no means agrees with a general refinement of manners,* or the humane principle of a democratic republic. Persons injured ought to rest satisfied with a full security in the right of reparation. The right of punishing ought to be exercised solely for the prevention of crime, and to be permitted to those only, who are appointed and selected by law for that purpose, and who are supposed to be capable of candor and moderation in their proceedings. The practice of admitting common informers, who are to receive a share of the penalty, as a reward for prosecuting, is still less to be justified. The practice can never be necessary, in any state of manners. In this case, the plea of preventing a greater evil by the admission of a less, wholly fails. It often serves the purpose of private malice; always to cultivate a spirit of revenge, and to disseminate

* By refinement of manners, is not meant the etiquette of politeness merely, which may consist with many traits of barbarous manners. It consists with the modern point of honor; the practice of duelling to revenge personal affronts and imaginary injuries; a practice which still disgraces some of the American states. We ought rather to place a refinement of manners in the sentiments of humanity, and a general spirit of accommodation.

feminate jealousies, and private animosities among the citizens. It is calculated for those governments only, in which the rulers foresee the punishment of their own crimes in the unanimity of the people. Can we then hesitate to pronounce, that in the United States of America, the institution, of criminal prosecutions, in the name, and under the direction of private persons, is contrary to the present state of manners, and the principles of their governments? And that the intervention of a grand jury ought to be secured in every constitution, — as the sacred right of the people, in prosecutions for crimes?

The observations made on the institution of grand juries, who, by their intervention between the ministers of the law, and the people, and their approbation of prosecutions, remove the odium of severity, and reconcile the execution of criminal law, to the sentiments of the people, apply with more force to petit juries, in proportion as the condemnation is of more consequence than the accusation. This is not all. The institution is the best which has been devised, and probably, which can be devised by human wisdom, for obtaining substantial justice, in trials, both criminal and civil.

The particular province of a jury is to weigh evidence, and to decide upon facts.

P <

It

It is true, that, in every question, justice results from a combination of law and facts. It is true, also, that in a complicated state of society, the law may become intricate, and its application not a little difficult. This, however, can happen, in questions only of a civil nature. No crimes are to be made out by a construction of dubious facts, or a doubtful application of law. It is the province of the Judges to explain and apply the law, when it is submitted to them, by the Jury, on a statement of facts. To such statement the Jury are fully competent.

Will it be thought strange to assert, that professional and systematic knowlege is less competent to judge of proofs of fact, than plain sense, conversant only in the common business of life, and the common characters of men? And yet, to the mortification of the great and the learned, experience has established this to be generally true. It is not without reason, that men acquiesce more readily in the verdict of a Jury, than in the opinion of the Judges, in matters of fact. At the same time, there is another consideration of nearly equal weight. The Judges are viewed as a distinct class, placed above the common interest and common feelings of the citizens. Hence arises an idea, though often ill founded, of a distinct interest,

interest, and a general bias upon certain questions. Juries are, or ought to be, taken from the substantial class of citizens. Effectual provision should be made to guard against every inlet to the corruption of Juries, and against the admission of those on trial, who may be subject to prejudice, or interested views in their decisions. With these precautions, the justice of their decisions will be attributed to the excellence of the administration. If, at any time, they should prove unjust, it will be attributed to the imperfections of humanity. It will be viewed as a temporary inconvenience, for which the laws are not answerable; while unjust decisions made by the Judges, are considered as dictated by standing, official prejudices, by interest, or secret corruption, which, however dangerous, are not easily removed.

From this brief view, it appears, that the institution, in which I comprehend both Grand and Petit Juries, is intimately connected with the principles of a free government. It sufficiently obviates any danger, which might be supposed to arise from the independence of the Judges, and secures the administration of justice, in the spirit of impartiality and moderation, the true spirit of a free government.

S K E T C H V.
O F E Q U A L I T Y.

It is proposed, in this Sketch, to enquire, In what sense men are born equal?—In what sense they are said to have equal rights?—Of the nature of equality in Republics—And of the right and equality of descents.

S E C T I O N I.

In what sense Men are born equal—And in what sense they are said to have equal Rights.

IT has been said, and justly, that there are natural inequalities among men. Some are stronger, others are weaker. They differ no less in their mental powers. These differences frequently depend on the structure and organization of the body, and arise from causes, which began their operation antecedent to the birth. They are, sometimes, derived through a long line of ancestors. Men therefore, are not born equal. There are, likewise, adventitious inequalities. The same object, whether
physical

physical or moral, cannot be exhibited to every one, at all times, in the same point of view. The minds of all are not alike susceptible of impressions from the same object.

Nature has opened a great variety of pursuits, which are lawful, and which are, more, or less, necessary to men. Different men are necessitated to different pursuits. No one man is equal to the task of all, nor do his occasions require it. The convenience of all, mutual interest, and mutual accommodation, dictate to each, a certain degree of limitation in his pursuits. Different pursuits require different degrees of exercise, which produce different degrees of bodily strength. The different objects, exhibited in the variety of pursuits, produce different degrees of knowledge. These causes, sometimes, correct, but more frequently, increase the original inequalities, both of body and mind.

When, therefore, it is said, that men are born equal, it cannot be understood, that they are born with equal powers and faculties, or an equal facility of improvement; or that the laws of their nature admit, in practice, of equal acquisitions. Can it mean any thing more than, that all men are born equally free, and have an equal right to follow the laws of their nature, compre-

hending all its relations? So far men are equal in rights. Power and right are not convertible terms. Rights are the result of certain relations. They do not, for their existence, essentially, or principally depend on power. Power is necessary to the present exercise only, to the full enjoyment. They are sanctioned by the laws of our nature, and are as immutable as the laws themselves. A man may, by force, be deprived of the present exercise and enjoyment of his rights; but he is not, therefore, deprived of the rights themselves. Are the laws of nature, are civil laws destroyed, because they are violated? Certainly they are not.

Rights may be divided into general, or primary, and particular, or secondary rights. General rights are, first, those, which are purely the rights of the mind, or intellectual rights. These can never justly be subject to civil regulations, or to the control of external power. Secondly, a right to use our own powers and faculties, natural and acquired for our own convenience and happiness.* The use, however, must be in

a

* This comprehends all those rights which Judge Blackstone has reduced to three principal articles—"The right of personal security—the right of personal liberty—and the right of private property," or the right of making and enjoying acquisitions.

Black. Com. I. 129.

a just compromise with the convenience and happiness of others, agreeably to the laws of social nature, and such combinations and regulations, as are clearly derived from those laws. Under the last head, comes the general right of making acquisitions. The exercise of this right, therefore, is subject to particular modifications. Particular rights are found in certain relations to something external. They are the title, which a man derives from the exercise of his powers and faculties, in any just and lawful mode of appropriation, to the exclusive enjoyment of those things, which he has brought within his general right of acquisition. The general right of acquisition, is the foundation of particular rights. The latter are derived from the former. They do not stand in opposition, but in perfect harmony. Without the particular right, by which men are secured in the enjoyment of their several acquisitions, a general right to acquire would be of no avail. The general rights, however a part of them, to render them universally reciprocal in society, may be subjected to certain modifications, can never justly be abridged, or suffer any diminution, either directly or by consequence. Particular rights exist in certain relations between a man and particular subjects. These relations

tions are liable to various alterations and modifications. The man may cease, and with him all his rights. The subject may cease. The right to the subject may be forfeited by the laws of society. It may be transferred, enlarged, or diminished.

Of property it is universally true, that he, who has the full right of enjoyment, has likewise the right of disposal. The right of disposal is co-extensive with the right of acquisition. Although one may have a present, exclusive right of property in a certain subject, it is nevertheless open to another's right of acquisition, by mutual compromise. In this consists the harmony and reciprocity of the general right of acquisition with the general rights of property. Different powers may give, greater or less extent to particular rights, or to the subject of those rights. The greater the powers and faculties of an individual, the more things he may bring within his particular rights. The result of all this is, that general rights alone are permanent, are equally and fully attendant upon every individual. So far all are equal in rights. Particular rights are, for the mutual accommodation, and happiness of men, subjected to their occasions and necessities. Indeed, were not this the case, the sense of property must be fallacious ; arts must
cease ;

cease ; industry could have no reward ; economy would be of no avail to the individual, and liberty itself would be but the dream of the visionary.

SECTION II.

Of the Nature of Equality in Republics.

SOME of the most eminent writers on government, have supposed an equality of property, as well as of rights to be necessary in a republic. They have, therefore, prescribed limits to individual acquisition. The Reason given is, that riches give power to those who possess them, and that those who possess power, will always abuse it to the oppression of others. If this be a good reason for limiting the acquisition of riches, there is equal reason for limiting the improvement of bodily strength and mental abilities. Such a step would be an abridgement of the primary rights of man, and counteract almost all the laws of his nature. It would, perhaps, could it be reduced to practice, place the whole human race in a state of fearless quietude ; but it would be a state of tasteless enjoyment, of stupid inactivity, not to be envied by the lowest tribes of the animal creation. If

If such be the principles of a republican government, it is a government out of nature. Those have made a wiser choice, who have submitted to the less tyrannical principles of absolute monarchy. These are not the principles of a republic. They are the principles of anarchy, and of popular tyranny.

We have just now enquired into the nature of equality among men, and have seen in what it consists; a free and equal enjoyment of the primary rights, which are, the intellectual rights, and the right which men have of using their powers and faculties, under certain reciprocal modifications, for their own convenience and happiness. The equality necessary in a republic, requires nothing more, than this equality of primary rights. I shall here instance in the right of acquisition only, as being sufficient for my present purpose.

To the security of this right, certain regulations, as to the modes and conditions of enjoying the secondary rights, or in other words, of holding property, are necessary. Not, indeed, as to the quantity, but the freedom of acquisition, use, and disposal. To give to any individual, or class of men, a monopoly, an exclusive right of acquisition in those things, which nature has made the subjects of property, to perpetuate,

ate, and render them unalienable in their hands, is an exclusion of the rights of others. It is a violation of the equal rights of man. Of this nature are all exclusive privileges ; all perpetuities of riches and honor, and all the pretended rights of primogeniture. Inequality of property, in the possession of individuals, is not directly, nor by inevitable consequence, subversive of genuine liberty. Those laws are, indeed, subversive of liberty, which, by establishing perpetuities, deprive the owner of a right of disposal, and others, so far as they extend, of the right of acquisition ; which annex privileges to property, and by making it a qualification in government, create a powerful aristocracy.

Riches are the fruit of industry. Honor the fruit of merit. Both ought, as to their continuance, and the influence which attends them, to be left to the conduct of the possessor. If a man, who, by industry and economy, has acquired riches, become indolent, or profligate, let him sink into poverty. Let those who are still industrious and economical, succeed to his enjoyments, as to their just reward. If a man, who, by noble and virtuous actions, has acquired honor, the esteem of mankind, will behave infamously, let him sink into contempt. To exclude the meritorious
from

from riches and honors, and to perpetuate either to the undeserving, are equally injurious to the rights of man in society. In both it is to counteract the laws of nature, which have, by the connection of cause and effect, annexed the proper rewards and punishments to the actions of men. Wealth, or at least, a competency, is the reward, provided by the laws of nature, for prudent industry; want, the punishment of idleness and profligacy.

If we make equality of property necessary in a society, we must employ force, against both the industrious and the indolent. On the one hand, the industrious must be restrained, from every exertion, which may exceed the power, or inclination of common capacities; on the other hand, the indolent must be forcibly stimulated to common exertions. This would be acting the fable of Procrustes, who, by stretching, or lopping to his iron bedstead, would reduce every man to his own standard length.

If this method should be deemed ineligible, the only alternative will be, either by open violence, or the secret fraud of the law, to turn a certain portion of the well-earned acquisitions of the vigilant and industrious, to the use of the indolent and neglectful.

Let

Let us not, in a Republic, attempt the extreme of equality : It verges on the extreme of tyranny.* Guarantee to every man, the full enjoyment of his natural rights. Banish all exclusive privileges ; all perpetuities of riches and honors. Leave free the acquisition and disposal of property to supply the occasions of the owner, and to answer all claims of right, both of the society, and of individuals. To give a stimulus to industry, to provide solace and assistance, in the last helpless stages of life, and a reward for the attentions of humanity, confirm to the owner the power of directing, who shall succeed to his right of property, after his death ; but let it be without any limitation, or restraint upon the future use, or disposal. Divert not the consequences of actions, as to the individual actors, from their proper course. Let no preference be given to any one in government, but what his conduct can secure, from the sentiments of his fellow citizens. Of property, left to the disposal of the law, let a descent from parents to children, in equal portions, be held a sacred principle of the constitution. Secure but these, and every thing will flow in the channel intended by nature. The operation of the equal laws of nature, tend to exclude, or correct every dangerous excess.

Thus

* Mont. Sp. L. B. viii. C. 3.

Thus industry will be excited ; arts will flourish, and virtuous conduct meet its just reward, the esteem and confidence of mankind. Am I deceived ? or are these the true principles of equality in a democratic republic ? Principles, which will secure its prosperity, and, if any thing in this stage of existence can be durable, its perpetual duration.

S E C T I O N III.

Of the Right and Equality of Descents.

IN every nation, among whom property, as a provision for the future, has become an object of pursuit, except under the most arbitrary governments, the right of children to inherit the estates and interests of their parents, has been adopted in their civil institutions. It has been a question, whether this be a dictate of the law of nature, or whether it be a regulation of civil policy merely.

Those, who maintain, that private property is a creature of municipal law only, and that its right originates in civil institutions, do well to suppose, that every
rightful

rightful mode of acquisition and disposal, the transfer of the right, and every mode, by which it can pass from one to another, originate in the same institutions. If, however, the right of property, as, I think, has been, clearly, shewn, be an establishment of natural law; if it result from certain relations of nature, and be discovered by an internal sense, an intuitive perception, it will be but a reasonable conclusion, that the laws of nature, likewise, reach the acquisition and disposal. Such laws there undoubtedly are; and I am persuaded, it will, on enquiry, be found, that, in these laws, originates the right of the heirs in the estate of their ancestors. Civil institutions have only modified, and confirmed the right. It is not, indeed, an absolute, but a qualified and subordinate right, subjected to the right and occasions of the ancestor.

The union of parents and children forms a society, of all the most intimate, and the most purely natural. The reciprocal rights and duties, parental and filial, are derived purely from the relations of nature. They are, in their origin, independent of the modifications of art or civil policy. Not only members of the several families, but others, distinctly, and forcibly perceive, what I have ventured to call the individuality of these little communities of nature.

The perception resembles that of the members united to form the body. All the members of these little communities are perceptively conscious of the warmest and tenderest interest, in the good or evil, moral or natural, which befalls each other. No man hesitates, when he observes an instance of a contrary disposition, boldly to pronounce it to be unnatural.

When a child is arrived at maturity, and ready, as a new stock, to branch into a new family, it is, from the subsisting relations, perceived to be the duty of the parent, according to his ability, and with a due regard to the subsisting or growing relations of the other members of the family, to contribute to the advancement of such child. Should a parent, in common cases of this kind, neglect to contribute, every one perceives him to be guilty, tho' not of a civil, yet of a moral crime. He is, at once, believed to be under the prevailing influence of avarice, or some other too selfish passion, which has stifled the voice of nature.

The claim of the child, arises not from any *quid pro quo*, any legal consideration, advanced on his part, in which the duty, on the part of the parent, originates. Did the duty originate in any such consideration, the duty and the consideration would be

be commensurate. The child, who had contributed least to the benefit of his parent, during minority, would have the least claim upon the parent for advancement. Where there has been a criminal neglect, or disobedience, on the part of the child, this is truly the case. When it has happened through a natural imbecility, the misfortune, and not the crime of the child, the obligation of the parent is rather enhanced, than diminished. This is clearly a dictate of nature, and designed to maintain a degree of equality among the members of the same family, by apportioning the provision to the unavoidable exigences of each. These duties, consistently with the right of the parent, with his authority, and the harmony of the family union, can be very little, if at all, subjected to civil rules. They must be left to the law of moral obligation.

I think the truth of these observations cannot be doubted. Hence it clearly follows, that the children, resulting from the relations of nature, in their connexion, have a lien on the property of the parent; subjected nevertheless to the full right of the parent. It as clearly follows, that, when the right of the parent ceases, by his death, the right of the children takes full effect, as surviving members of the connexion.

The law, which confirms it to them, does nothing more, than perform the last natural duty of the parent.

Where there is no immediate descendants, the same relations, different only in degree, appear to extend to collaterals. In proportion to the distance, the relations are less strongly marked, and the perception of right more faint. It is not easily determined, at what precise point they wholly cease. It has generally, in the best ordered states, been agreed to carry the right, as far, as the relations can be traced. The relations, however remote, clearly carry a right preferable to that of a total stranger.

It may be thought, that if the right of the children, as has been contended, be founded in the laws of nature, those laws are immutable, and consequently the right; that it will, therefore, abridge, or wholly supersede the parent's right of disposal. It is true of the laws of nature, when considered abstractly, that they are, immutable; but it is not true, in the application. The laws of nature result from certain relations. These relations, remaining under the same combinations and modifications, the result, consequently the law, will be invariably the same. The relations are subject to different arrangements. They may be enlarged,

enlarged, or diminished. They may partially or wholly cease. In all these cases, the result, and consequently the law, as to its application, will vary, precisely as the relations themselves.

The parent during his life, has a full right to direct the use and disposal of his property. That he is under a natural obligation to provide for his household, and to advance his children with his property, as his occasions admit, and their circumstances require, no more affects the freedom of his right, than any moral obligation affects the freedom of action. On the death of the parent, his right, and the relation in which he stood, while living, ceases. The relation of the children, as far as it respects the property, of which no disposition had been made, still remains. Their right, which was only a contingent right, and, indeed nothing more than a moral claim, is perfected and realized.

It may likewise be thought, that if the right of the children be thus established, it militates against the right of the parent to make any testamentary dispositions of his property. It has been observed, in effect, that the right of the children, during the life of the parent, is founded in claims of a moral nature. Of their admission and extent, he is, by nature, constituted the
sole

sole judge. There are other claims upon him and his property, besides those of his children. His property is subjected, civilly, to all claims of right, both of the public and of individuals, with whom he may be connected. It is subjected to other claims of a moral nature, of which he is, likewise, the sole judge. He may think it his duty to give some of his property for public use, or for the encouragement of virtue, the reward of humanity, or exemplary instances of filial piety. It is subject, during his life, to his occasions, natural, civil, and moral ; and a disposition, to take effect after his death, is no more inconsistent with the right of the children, than a transfer while he is living. In such dispositions, the parent may misjudge ; he may have done wrong ; but it is, generally, an affair of too much delicacy, to endure the decision of the civil law.

After the death of the parent, when his rights are finished, and the just claims of others answered, the children have an equal claim, and equal right, in the property of their common ancestor. If nature dictate any preference, it is in favor of the younger, and not of the elder branches. It appears not unreasonable, that, when any of the children have been left, in a state of helpless infancy, the common property of
of

of the parent should assist in making that provision for their support and education, which the parent, were he alive, would consider, not as an advancement, but an indispensable duty of nature,

Thus from a careful examination of the right of descents, upon natural principles, we find no intimation of the right of primogeniture; no preference in successions, but those, which tend to an equal enjoyment of the goods of fortune. We may repeat it, that the equal laws of nature, if rightly understood and practised in a government, tend to prevent, or correct every dangerous excess. The more we examine these laws, the more will appear their coincidence with the nicest moral feelings of the human heart, and the genuine principles of equal laws and government.

S K E T C H VI.

OF THE RIGHTS OF PUNISHMENT AND
TAXATION.

THE exercise of these rights, by government, the right of punishment, and the right of taxation, are necessary to its support, and even to its very existence. The exercise, however, would seem, on a cursory view, to be an infringement of personal liberty, and to approach a violation of private right. Accordingly, it has been held by some, that they originate in that necessity, by which they have supposed men to be compelled, on entering into civil society, to give up a part of their natural liberty. It is proposed in this Sketch, to consider more particularly, the origin, mode of exercise, and limitation of these rights.

S E C T I O N I.

Of the Right of Punishment.

THE right to punish individuals for crimes against society, is not an arbitrary institution of civil policy, nor is it originally, and independently inherent, in any particular

organ of government. It is founded in the moral and social nature of man, and is derived to government through that channel. We have already seen, that man was not formed for individual independence, but for society, for civil union in government. All the liberty of an individual, all his right, which can affect the rights and liberties of others, is placed in an accommodation, a mutual compromise with the rights and liberties of all, and every member of the society. To facilitate this accommodation, and to render a compromise of rights practicable, mutual, and safe, is the great object of all civil institutions and laws.

If man be by nature a social being, it is an obvious conclusion, that it is his duty to forbear to injure the society, of which he is a member; and that the violation of this duty is a violation of the laws of his nature. It may here, perhaps, be thought sufficient to say, that rights and duties are reciprocal; every society must have a right corresponding with the duty of the individual; if the individual violate his duty to the society, the society have clearly a right to take satisfaction. But, as this subject is of great importance in national jurisprudence, I shall be more particular in the investigation, by attempting to analyse the right, and trace it to its source in the nature of man.

Deity, in the constitution of nature, has not done every thing for man. He has established certain relations, from which result the laws, which ought to govern, both moral and social actions. He has given man powers and faculties, for discovering these relations, and the laws, which result from them. The mode of giving these laws their full effect, is left to his sagacity, to the exercise of his reasoning powers. This is not all. To enable him more steadily to pursue them, and to give them a greater effect, he is furnished with a sense of right and wrong, and a sense of merit and demerit, attending the observance or non-observance; the moral sense, and the sense of accountability. These senses, when rightly informed, extend their authority to every moral, every social, and every civil action. Hence, on the perpetration of a crime, arise in the mind of the perpetrator the feelings of guilt, and a consciousness of a desert of punishment. These sentiments are common to men, both in a review of their actions, and in passing judgment upon the actions of others. What might at first seem to contradict that universal desire of happiness, which goes to the nature of every individual, is, that guilt is, sometimes, attended with a strong desire of punishment. This is what we, generally,

generally, call remorse. If punishment be inflicted by no other hand, self punishment is well known to be the gratification provided by nature, for the violent emotion of remorse. From this view of the subject, the right of punishing the guilty, is clearly perceived to be derived from the relations of men in society. It was not alone from an extraordinary impression of the divine anger on the mind of Cain, after the murder of his brother, but from a perception of these relations, and a right resulting from them, that he is made to say, "Who so findeth me shall slay me."

The Marquis Beccaria has founded the right of punishment, on the same principles. "Let us (says he) consult the human heart; and there we shall find the foundation of the sovereign's right to punish; for no advantage in civil policy can be lasting, which is not founded in the indelible sentiments of the heart of man."*

In cases of mere private injury, the right is perceived to belong to the party injured. He has a right to demand reparation for the injury, and a caution against the like injury in future. The mode of obtaining both is to be regulated by a consideration of the present nature of social rights.

R

Where

* Essay on Crimes and Punishments. Ch. ii.

Where the right cannot be exercised, by the party injured, without danger to the social rights of others, the laws of social nature dictate a submission to an impartial tribunal ; a provision, which can be made, and enforced, in the union of civil society only. When a person is guilty of a violation of those social rights, which more immediately affect the interest and happiness of the whole, the right of demanding reparation and caution is perceived to belong to the community. The perception is facilitated, by means of the social sense, mentioned in a former sketch ; the sense, by which each member perceives a kind of individuality in the whole, comprehending himself.

In a state of any considerable degree of social and civil improvement, men endure with reluctance the exercise of the right of punishment, by the party injured. This happens, not because men are more unfit, in this state, for the exercise ; but because they have a nicer sense of right and wrong. Their social feelings are extended and refined. The security and happiness of each individual member, becomes the interest, as it affects the happiness of the whole. They perceive, not only the inhumanity, to which the practice tends, but the injustice of which it is, in almost every instance,
pro-

productive. They perceive, that the power of punishing can, in almost no case, be exercised by the party injured, without a perpetual violation of other's rights, of the obligations of morality, and the danger of a total annihilation of social happiness. Hence it becomes, the right, interest, and duty of every civil community, to punish by way of caution, all those injuries which disturb, or tend to disturb their happiness, or to render it insecure. And it will extend to whatever the common sentiment has connected with the public happiness. It is evident then, that the appropriate right of government, to punish, by way of caution, the crimes of its members, is not an arbitrary institution of civil society, nor does it originate in necessity only; but in the sentiments of the human heart, the existing relations of men in society, and has the full sanction of the laws of nature.

The organ, by which the right of punishment shall be exercised in government, is a consideration of propriety, safety, and convenience. A slight attention to the subject, will discover it to be a branch of the right of legislation, or in propriety ultimately connected with the duties of that branch. Without the right of punishment for the violation of a law, the right of legislation would be perfectly nugatory.

There is a threefold division of the right of punishment, or rather of the exercise of the right, corresponding with the general division of the powers of government. 1. The decreeing of penalties, which shall be incurred by the breach of any law. This involves a consideration of the importance of the law, to the interests of the state, and corresponds with the right of legislation. To that branch therefore, it will, with propriety, be entrusted. 2. The application of the law to particular cases, for the purpose of determining whether it has been violated, and who has incurred the penalty. This is clearly, the proper business of the judiciary. 3. The execution of the sentence upon the criminal, which falls to the province of the executive.

The right of punishing is, in practice, frequently limited, only by the will of the legislature, and the decisions of the judiciary; but the laws of nature have not left it arbitrary. They have assigned certain limits, beyond which the right ceases, and the exercise of the power becomes a crime against society. These limits are not, in every sense, permanent and invariable. It is universally true, that it is limited by the end of preventing crimes, and securing obedience to the laws. It is also true, that
the

the penalties, which, in one state of society and manners, are adequate to that end, may, in a different state, be wholly inadequate.

Not only the state of manners, but the principles of the government affect the severity of punishments. Where the support of the reigning powers, without any regard to the good of the people, is the sole end of every measure of state, fear, which is inculcated by the severity of punishments, is the only principle of obedience. Such governments admit of limits, neither to crimes, nor to the severity of punishments. No actions are considered to be criminal, because they are injurious to the people, or even against the laws of nature; but because they are conceived to be dangerous to the reigning power, and a contempt of its authority. In proportion as governments have ascended to natural principles, and made the happiness of the people the end of their institutions, crimes and punishments have admitted of more definite limits. It has been perceived and acknowledged, that, in a civil view, those actions only are criminal, which are injurious to the community, or to individuals, whose rights and happiness the community is bound to protect, and secure; that the prevention of crimes is the sole end of

punishments ; and that all beyond this is the spirit of revenge, or of wanton cruelty.

It is worthy of remark, that in the progress of society, no science has received so little improvement as that of criminal jurisprudence.* It is true, that many circumstances of outrageous violence, with which capital and other punishments were inflicted, have, in some nations, been abolished ; but it may, with equal truth, be observed, that among those nations, who boast the highest refinement, the greatest degree of improvement in their civil policy, the number of capital punishments, has been increased out of all proportion to the reform in point of cruelty. The British government, which in civil improvements, and the humanity of its laws, has gone beyond most other European nations, has proceeded with a degree of wantonness, in the enacting of capital punishments. One hundred and sixty crimes, declared to be worthy of immediate death, hardly complete the murderous catalogue.

Several causes have concurred to prevent any considerable improvement in the criminal code. Men appear, often, to have entertained an idea of justice, as of a physical

* The world is more indebted to the Marquis Beccaria, for his little treatise on Crimes and Punishments, than to all other writers on the subject.

sical power, or something which really exists;* whereas, it is only the result of certain relations. Civil justice results wholly from the relations of men in civil society. Beyond these it has no relation, nor even mental existence. This notion has done infinite mischief in the world. It has represented justice, as really offended, in proportion to the crime committed, and inexorably demanding satisfaction by a certain, determinate punishment to be inflicted on the offender; like the malevolent deities of some nations, who are to be conciliated with human sacrifices only. By considering a satisfaction to justice as the principal end of punishment, and disregarding its utility to society, the only safe and certain criterion of the real justice and propriety of any class of civil or social actions, it has served to reconcile people, in other respects, of a refined sensibility, to an excess of cruelty, in the enacting, and in the execution of laws.

A punishment annexed to a crime is, by the force of habitual association, viewed in connexion with the crime, and often serves as a measure for the degree of its guilt, which arises only from its relation to society. When, from any cause, the perpetration of a particular species of crimes

has

* Beccaria, on Crimes and Punishments. C. ii.

punishments ; and that all beyond this is the spirit of revenge, or of wanton cruelty.

It is worthy of remark, that in the progress of society, no science has received so little improvement as that of criminal jurisprudence.* It is true, that many circumstances of outrageous violence, with which capital and other punishments were inflicted, have, in some nations, been abolished ; but it may, with equal truth, be observed, that among those nations, who boast the highest refinement, the greatest degree of improvement in their civil policy, the number of capital punishments, has been increased out of all proportion to the reform in point of cruelty. The British government, which in civil improvements, and the humanity of its laws, has gone beyond most other European nations, has proceeded with a degree of wantonness, in the enacting of capital punishments. One hundred and sixty crimes, declared to be worthy of immediate death, hardly complete the murderous catalogue.

Several causes have concurred to prevent any considerable improvement in the criminal code. Men appear, often, to have entertained an idea of justice, as of a physical

* The world is more indebted to the Marquis Beccaria, for his little treatise on Crimes and Punishments, than to all other writers on the subject.

sical power, or something which really exists;* whereas, it is only the result of certain relations. Civil justice results wholly from the relations of men in civil society. Beyond these it has no relation, nor even mental existence. This notion has done infinite mischief in the world. It has represented justice, as really offended, in proportion to the crime committed, and inexorably demanding satisfaction by a certain, determinate punishment to be inflicted on the offender; like the malevolent deities of some nations, who are to be conciliated with human sacrifices only. By considering a satisfaction to justice as the principal end of punishment, and disregarding its utility to society, the only safe and certain criterion of the real justice and propriety of any class of civil or social actions, it has served to reconcile people, in other respects, of a refined sensibility, to an excess of cruelty, in the enacting, and in the execution of laws.

A punishment annexed to a crime is, by the force of habitual association, viewed in connexion with the crime, and often serves as a measure for the degree of its guilt, which arises only from its relation to society. When, from any cause, the perpetration of a particular species of crimes

has

* Beccaria, on Crimes and Punishments. C. ii.

has become frequent, the minds of legislators are irritated against the perpetrators, and against the crime. Determined to apply an effectual remedy, they are too prone, without adverting to the cause of the evil, to enhance the penalty, which soon becomes a new measure for the guilt of the crime.

It is, however, for the interest of humanity, an excellent disposition of Providence, that in a state of any considerable degree of refinement, sanguinary laws always defeat the end of their institution. If the penalty annexed by the law, to a crime, rise above the demerit of the crime, in the estimation of the people, whose sentiments are in this case the best criterion, the law is rarely executed. Humanity, whose dictates are more readily obeyed, than the requisitions of law, is interested in the escape, or acquittal of the criminal. When the severity of the punishment excites the pity of the people, the effect of punishment is more than lost. While they pity the criminal, they forget his crime, or diminish its guilt, and conceive an abhorrence of the law. If the criminal be detected, and condemned, he is viewed as unfortunate, rather than guilty.

From an attention to the state of crimes in different societies, we shall find, that,
in.

in those governments, whose legislators have swelled the list of capital offences, and by applying the same ultimate punishment to crimes of very different dyes, have confounded all degrees of guilt, the same crimes are more frequently committed, than in those governments, where the laws are enacted with more mildness, and different degrees of guilt distinguished by different degrees of punishment. The punishment ought never to exceed, but rather to fall short of the demerit of the crime in the sentiments of the people. Where this is the case, humanity is engaged on the side of the laws, and punishment is rendered as certain, as the perpetration of the crime. This adds a mild, but effectual and irresistible energy to the execution of the laws. It is universally true, that certainty of punishment has a much more powerful effect, than severity, in the prevention of crimes. Indeed, the resentment and contempt of mankind, which always pursue the perpetrators of a crime, if not converted into compassion, by the severity of the law, constitute a punishment of no inconsiderable efficacy.

I add, with entire satisfaction, that in no government, is a certain degree of mildness more requisite, in none is it more effectual, to the prevention of crimes, than
in

in a democratic republic. An equitable moderation in punishment, while it exhibits the powers of government, in the amiable light of humanity, cherishes and invigorates the only efficient principle in such republic, a sentimental attachment to its institutions and laws.

SECTION II.

Of the Right of Taxation.

THE Right of Taxation is, no more than the right of punishment, an arbitrary institution of civil policy, or originally and independently inherent in any particular organ of the government. Wherever it is placed, it is a betruſted right. The right itſelf, like all legitimate, ſocial, and civil rights, is derived from the relations of men in ſociety.

It is perceived, even by the moſt ſimple, that from the relations of men in civil ſociety, there reſults a duty upon them, not only to forbear to injure the ſociety, but alſo to contribute to its ſupport, and proſperity. The ſocial ſenſe, which has ſeveral times been mentioned, has no inconfiderable effect

fect in rendering the perception distinct, and in collecting and fixing the object of this duty. The duty may be called, the duty of contribution on the one hand, from which, on the other, results to the society the right of taxation. The right of taxation is nothing more than a right to enforce the duty of contribution, to which every member of the community is originally bound. The duty and the right, wherever it resides, are reciprocal. The duty is the same upon every individual member, as to the reality, not as to the quantity of the contribution.

No civil duty, perhaps, can less be trusted to the voluntary conduct of individuals. None more needs a provision of general rules, to secure equal justice, both to individuals and to the community. The utility of the community cannot be opposed to the utility of the individual members in general. Nevertheless the latter, from its being more immediate, so far outweighs the former, that they are often viewed in opposition. The duty, therefore, would never be performed, unless there existed, somewhere, a right, with authority to enforce it, as well as to apportion the quantity. The end of this duty is the utility of the community; not indeed, in an absolute sense; but in a certain relation, proportion

portion and agreement with the utility of individuals.

The right of apportioning and enforcing this duty, which is the right of taxation, is originally, in the community, considered as an aggregate body. The organ, by which it shall be exercised, is, as in the case of punishment, a consideration of propriety, convenience, and safety. The apportionment must be made by general and equal rules, and the demand enforced by the sanctions of law. It is, therefore, with propriety and convenience entrusted to the legislative body. If such body be composed of a full and equal representation of the several national, as well as particular interests, the betrustment is safe. The power and right of taxation can be entrusted to no man, or body of men, who are not amenable to the people for the exercise, and who do not equally share the burdens, which they impose, without a moral certainty, of oppression, the total subversion of liberty, and all security of private property. Thus it comes out, that the great question about taxation and representation, is a question about modes, rather than rights; a mere consideration of safety to the rights of the people. It is indeed, a most important consideration; but it does not reach the original right, founded

founded in the duty of contribution. The representation of any part in the national legislature, is a proof of an intimate civil connexion, which undoubtedly subjects them to the duty of contribution; but if the people chuse to entrust the right of taxation, in any other mode, or to any other body, the exercise may be equally legitimate.

It is not easy, perhaps, to ascertain with precision, what degree of social union, among individuals, will incur the duty of contribution. It is, however, clear, that one community can have no right to tax, personally, the members of another community, where the citizens of both are not united ultimately, by an internal, reciprocal, civil connexion. States in league may, as far as the league extends, incur, one to the other, the duty of contribution; but the duty is demandable against the States collectively, not against particular members. Each state has a demand against the other, and the several states have a demand against their citizens individually, to enable them to fulfil their engagements. Between the several states, the right to enforce the duty resides equally in every part, till, by mutual agreement, a body is formed for its exercise. Till this has taken place, it remains, like that of independent

individuals, a voluntary duty; or to be enforced only by an appeal to the law of nations—the right of the sword.

So different are the interests, both general and particular, in different states, that no universal rules can be prescribed, as to the particular mode of taxation, which shall be equally applicable to all. It will ever be a consideration of public convenience and private equity. The lawful interest of no citizen, or class of citizens, can, without injustice, and a violation of equal rights, be sacrificed to that of another, or even to that of the whole. That mode ought to be adopted, which, as far as general rules can extend, will operate agreeably to the principles of mutual compromise. A rule, very general, indeed, which has been applied in ethics, may, with great propriety, be applied in this case. Requisition shall be made of a man, according to that, which he hath, and not according to that, which he hath not. Taxes, therefore ought not to be apportioned upon persons, but upon things; upon property possessed or used by individuals. Its valuation, however, ought not to be according to the estimated value in market, but according to the ordinary revenue, which it may afford.

It has been usual to apportion taxes upon

a valuation of the property, or thing taxed. This will be just and equal, provided the valuation be made, not according to the market rates, but according to the income, which it may produce, with ordinary management. There are yet some exceptions, which will occur in their place.

Protection has, by many, been held, to be the consideration, on the one side, in which is founded the right of taxation, on the other. If it were so, protection should serve as a measure for the apportionment of taxes to individuals. But this is not the case. The duty of contribution, and consequently the right of taxation, arises from the whole relations, in which men stand in society. The same thing is true of every civil right and duty. The general relations are connected, and form a certain internal relation among themselves. If we take away one relation, it deranges the connection, varies the mutual relations, and, of course, the result. In those governments, in which the rights of the sovereign are supposed to be original, and independent of the rights of the people, it is in perfect consistency with the principles of the government, to derive the sovereign's right of taxation from the protection afforded to the subject, as a consideration. Where, as in democratic republics, those

S 2

who

who exercise the sovereign power, are only constituted organs, and exercise only the power of the people associated in civil government, the consideration between the sovereign and the people does not exist. The sovereign power, the whole right, is the power and the right of the people, thus associated, not individually, but collectively.

It is very true, that the laws of nature, from which result all legitimate civil rights and duties, are always calculated to attain some useful end ; but the useful end to be attained, is the criterion, by which to judge of their authenticity, rather, than the consideration, or foundation of the duty imposed ; the final, not the efficient cause. The right of the citizen to civil protection, is independent of any such consideration ; and any apportionment of taxes, upon that principle, would be grossly unequal, and oppressive. It would make the poor and the weak the greatest debtors to the state, for contributors they could not be. It would, at once, be destructive of itself, by turning protection into oppression.

The consideration of abstract relations, and abstract rights, fabrications of the mind only, which may, or may not, justly comprehend the relations and rights of nature, and are, perhaps, never precisely the same,

same, in the conception of any two individuals, cannot furnish sufficient data for the apportionment of taxes. It is necessary to find something more fixed and certain, and to take real quantities, as well in the data as in the product.

The only plausible theory, and which is capable of being reduced to practice, by the application of real quantities, is, that every individual in any community shall contribute to its support, in proportion to his enjoyments, as a member of that community. In this, however, no regard is to be had to mental, but to apparent and sensible enjoyments. Upon this principle the possession, and the use of property become the data for apportioning taxes to individuals. I have added the use, which will comprehend the consumption, at least beyond what is common and necessary to every class; because some will place the enjoyment in the use of consumption, rather than of profit in the possession. They may chuse, while others hoard or use for profit, to spend their acquisitions in the gratification of their passions and appetites.

Taxes ought to be assessed according to a general valuation. This mode will be subject to some inequalities; but the inequalities will not be greater, than what will always happen in particular assess-

ments. If taxes should happen to fall more equally in the latter mode, yet they have, in the former, great advantages, from being known and certain ; a very important consideration in the levying of taxes. It is, perhaps, a consideration of equal weight, that men are, generally, less dissatisfied with the inequalities of fortune, than those, which are imposed upon them by the ignorance, prejudice, or caprice of their fellow citizens. If, from the nature and situation of any species of property, which is a subject of taxation, great inequalities will unavoidably intervene, such property should be taxed with a degree of moderation proportioned to the inequality. It is a great alleviation, in such cases, that none are oppressively overburthened, though some may pay less than their just proportion.

Taxes ought not only to be equal, but, as far as the reasonable exigencies of the state require, and general rules can extend, to be apportioned to the visible means of the citizens, both collectively and individually. This, however, must be understood with some limitation. They ought not to be apportioned upon the means of living, but upon the means of payment, or what, on an ordinary calculation, ought to be the means of payment. This object
can

can be attained only by an extensive knowledge of the different interests, employments, modes, and necessary expence of living, with the different classes of citizens. With such knowledge the legislators may, in the general mode of valuation, and with a particular attention to the subjects of taxation, in a great measure, if not altogether, exempt from the burden of taxes, the necessary means of subsistence to the poorer class of citizens, who, though they may contribute nothing, directly, to the support of government, are far from being the least useful class in the state.

The exigences of the state must limit the aggregate sum to be demanded in taxes. But the demand ought never, for any continuance, to equal the sum of private revenues; much less ought it to be suffered to diminish the capital stock. Were government, by thus anticipating the revenue of its citizens, to deprive them of every comfortable prospect in a provision for the future, it would take away all incitement to enterprize, and even the spirit of private industry and economy. If in addition to this, the enormity of the demand, should constantly diminish the capital stock, nothing would be presented to view, but the gloomy prospect of inevitable poverty and distress; a situation in which

which a government cannot long subsist, without the most violent commotions. The same observations will apply to those burthens, which, through the unequal mode of apportionment, fall upon particular classes only.

The mode of apportionment, ought not to be directed by any single class of citizens, but by the interest of the whole, which consists in a certain ratio of the particular interests. If in the political consideration of taxes, the interest of the state, by which is generally meant, nothing more, than the interest of the majority, comes in competition with the interest of any class of the citizens, in their lawful pursuits, their interest ought not to be wholly sacrificed to that of the state, much less to that of another class. Every affair of this nature should be conducted upon the principles of a compromise of interests. In adjusting the compromise, however, the magnitude of the interests in competition is not to be adopted as the only rule of preference. Such rule would frequently prove a total sacrifice of the minor interest. Where it is demanded of particular persons or classes that they give up their interest for public service, they are as fully, as in causes which arise in cases between individuals only, entitled to a compensation

tion for all that, which exceeds their particular proportion. Such interferences will, however, rarely happen, unless taxation is applied to other purposes, than those merely of raising a public revenue.

In modern times taxes, besides their financial purposes, have been employed as a principal engine of state, for directing the industry of the citizens into those particular channels of arts, manufactures, or commerce, which are deemed to be most for the present interest of the community. A British writer observes, that "taxes may be so contrived, as to rival bounties, in promoting industry, manufactures, and commerce."* That they can have the effect to promote industry in general, is not very obvious. They may certainly be so contrived, as to promote it in particular channels; but perhaps, this is generally, if not always, done, by diverting it from others.

The application of taxes, to these purposes may, within certain limits, be highly beneficial to a community. Nations do not always make equal progress in those arts, which furnish the necessaries, conveniencies, and elegancies of life. Sometimes permanent, but commonly accidental, and temporary causes have directed their

* Kaimes's Sketches, B. II. Sk. viii. Sec. 1.

their industry into different channels. Habits of life, dexterity in old occupations, unskilfulness and the risk of failure in those, which are new, frequently prevent or delay the introduction of the most useful arts. Where this is the case, it may be a happy contrivance to exempt the home productions of a manufacture from taxes, and to impose a duty upon foreign productions of the same kind. It may enable the home manufacturer, by the advanced price of his goods, to indemnify himself, in a good measure, for the risk and expence of a new undertaking. But it is easily perceiv'd, that in a regulation of this kind, whatever the manufacturer gains by the advanced price of his goods, is really a tax upon the consumer; and as it has a tendency to exclude competitors, it is necessary to proceed with caution, lest it degenerate into a system of monopoly, one of the greatest evils in civil policy. there is, likewise, danger lest those, who are already engaged in lawful pursuits, and entitled to equal right, though, perhaps, not to equal favor, should, by an overburden, be too much deprived of their reasonable gains, and, perhaps, be too hastily forced into different pursuits, without the same prospect of an indemnification for their risk and experience. I believe, it
not

not unfrequently happens, that from a zeal for new improvement, and a too sanguine expectation of their public utility, old employments are burdened out of proportion to any advantage, which may be derived from the new.

The limits of these sketches do not permit me to enter into a detail upon this subject. My object is only general principles. Those who wish to see the justice and policy of different kinds of taxes fully investigated, will find an excellent treatise upon this subject in Dr. Smith's enquiry into the nature and causes of the wealth of nations.

S K E T C H VII.

OF THE MORAL OBLIGATION OF
CIVIL LAWS.

S E C T I O N I.

Judge Blackstone's opinion examined.— Civil Laws are binding on Conscience, when they accord with the principles of a Free Government, and the present state of Social Improvements.

THE learned Judge *Blackstone*, in his Commentaries says, ‘ It hath been holden, and very justly, by the principal of our ethical writers, that human laws are binding on men’s consciences.’ But afterwards he says, ‘ True as this principle is, it must be understood with some restrictions. It holds, I apprehend, as to rights ; and that when the law has determined the field to belong to Titius, it is matter of conscience no longer to withhold or invade. So also, in regard to natural duties, and such offences, as are *malæ in se*.* Here we are bound in conscience, because

* Wrong in themselves.

‘ cause we are bound by superior laws,
‘ before those human laws were in being,
‘ to perform the one, and to abstain from
‘ the other. But in regard to those laws,
‘ which enjoin only positive duties, and
‘ forbid only such things, which are not
‘ *mala in se*, but *mala prohibita** merely,
‘ annexing a penalty to the non-compliance,
‘ here I apprehend conscience is no farther
‘ concerned, than by directing a submission
‘ to the penalty, in case of our breach of
‘ those laws. For otherwise the multitude
‘ of penal laws in a state, would not only
‘ be looked upon as impolitic, but would
‘ also be a very wicked thing, if every
‘ breach of such laws were made a snare
‘ for men’s consciences. But in these cases,
‘ the alternative is offered to every man,
‘ either to do this, or submit to the penalty,
‘ and his conscience is safe, which ever side
‘ of the alternative he sees fit to take.’

Judge Blackstone seems to have been drawn into this conclusion from the state of criminal law in Great-Britain. It was not his design to improve the laws of England; but to facilitate the study; not to write a criticism, or examine their merits, but to give the elements of a system, which was already formed. Had his subject led him to a close attention to the nature of

T

laws,

* Evil as prohibited.

laws, as founded in the principles of society, in a free government, & the only end, which can be admitted in penal laws, he would probably have found reason for a different opinion ; especially, as far as respects the performance of those positive duties, which the general good of a well constituted society, in civil government, requires.

We have before seen, that man was formed for a state of civil government, and furnished with a disposition and principles which both allure and impel him to that state. Government may be originally formed upon different models ; and each, in a course of improvement, may receive many and great alterations. There are, however, principles common to all, arising from their general nature. From a variety of circumstances, situation of country, and different degrees of improvement, in arts, sciences, and manners, they may have particular principles arising from the particular nature of each.

When any individual acts in conformity to the laws of his nature, as constituted by the author of his being, taking in all connexions and dependencies, for every thing is relative, nothing stands alone, the actions of that individual are right and fit ; so far as he deviates from those laws, they are wrong, or vicious. From the nature of man, it is impossible, that a society should,
like

like an individual direct its actions by any common united volition. It must be done by rules or laws, by which the actions of every individual, as they concern the society at large, are to be directed. The same criterion holds here, as in the case of an individual. Those actions are right in any society, constituted upon natural principles, which are conformable to the principles and nature of that society. The actions of a society, which we call civil or political actions, are made up of the actions of individual members. It therefore clearly follows, that those are good laws, which require such actions of individuals as, taken together in all their connexions, are conformable to the principles and nature of the society ; and those are bad laws, which deviate from this end.* Let it be observed here, that under action I comprehend both performance and forbearance.

Judge Blackstone, in another passage, defines municipal law to be, "a rule of civil conduct, commanding what is right,

T 2

and

* The foregoing observations may be extended as well to the fundamental laws or laws of the constitution, as to the municipal laws of the state. Both ought to be equally adapted to the state of society, and of social improvements.

and prohibiting what is wrong."† If laws command or prohibit that, which is absolutely indifferent to the state, they deviate from the true spirit and principles of legislation in a free government. They are arbitrary. They agree not with the definition, which is a good one, of "commanding what is right, and prohibiting what is wrong." If they go farther, and command the violation, or forbid the performance of any moral duty, they become tyrannically unjust. In the former instance, instead of feeling an obligation, we feel ourselves insulted; in the latter we are filled with the utmost abhorrence of the laws. When laws coincide with the principles above laid down, when they fully agree with the above definition, they are strictly binding on the consciences of men. They ought not to allow themselves an alternative.

The objection, that in this light the multiplicity of penal laws would become a snare for men's consciences, does not appear to me to be well founded. It lies with equal weight against the moral obligation to the greater part of social duties. Previous

† Commentaries, vol. i. p. 44. "Municipal law is defined to be a rule of civil conduct, prescribed by the supreme power in the state, commanding what is right, and prohibiting what is wrong."

ous to a state of society, if man may be supposed ever to have existed in such state, the duties of the solitary individual must have been very few and simple. In the first stages of society, in a simple state of property, and a state of manners no less simple, duties must be confined within very narrow limits. Still they would greatly exceed those of the solitary individual. In the progress of society, the complex state of property, great improvements, numerous connexions, and extensive intercourse, introduce a great variety of social duties. These are left to be discovered, as the result of situation, circumstances, and relations; nor is the discovery and performance thought to be a task too difficult. In matters which become the subject of civil laws, the case is easier. Many actions are considered as evil, only when they are forbidden. Hence the duty of individuals arises on the requisition of the law, and is explained in the law itself. We are not, however, to suppose, that civil laws constitute the ultimate fitness or morality of actions, in a strict sense; but as an individual may allow others to reap advantage from the use of his property, so government may allow the individual members to do those things for their private advantage, which it is fitting should be the right of the public.

lic. In the former case, if the individual prohibit to others the farther use of his property, it is their duty to forbear; to persist in the use, will become a private injury. In the latter, if government prohibit the doing of those things for private advantage, which, though before allowable, by tacit consent, yet come within the claim and right of the public, the actions, so prohibited become wrong; morally so. It is to be observed here, that we are upon general rules or laws, and that the right of government is the right of the whole, not of any particular class, as distinct from the people.

To erect crimes upon actions wholly indifferent to society; to gratify the pride and caprice of one class of citizens, by allowing them what is forbidden to others; to inflict penalties to support a system of monopoly, or for fiscal purposes rather, than the purpose of preventing crimes, is to confound every idea of right and wrong in a criminal code. All this is to be found in a great variety of instances, in the laws of England. We need to instance only in the forest laws, the laws for the preservation of the game, and the penalties for not burying in woolen. In such cases, unable to find any moral restraint, men learn to make a distinction, between what is morally

morally, and what is only politically wrong. Amid a great variety of laws, some arbitrary and some not, their minds are wearied with discriminations. They will readily adopt the distinction made above, and refer the violation of the primary duties in government, to the class of *mala in se*; the others to the class of *mala prohibita*. Probably, however, no two persons in any government would agree in classing.

Few actions, considered simply, are evil in themselves. They are relatively good or bad. They take their qualities from situation and circumstances. Reverence to the Supreme Being is, unchangeably, a duty. Such duties, however important, are few in number. Most actions of men are of the former kind. Murder, for instance is one of the most heinous crimes in society. Yet to kill a man is not always wrong. To kill one, who by violence and wrong, attempts my life, is, when the only probable means of saving it, in fact justifiable. We conceive an officer to do his duty, when he executes a criminal condemned to death, by the sentence of the laws. Should a private person, without authority, kill a criminal, though under a legal and just sentence of death, he would, by common consent, as well as by the

the laws of the land, be deemed guilty of murder. In every country, in the early stages of society, when any person is murdered, it is held to be the duty of the next of kin to avenge the blood of the slain, to put the man-slayer to death. This, in the ruder state of men in society, is right. It is, in such state, the only known, or practicable mode of punishment, or mean of restraint. In the progress of social improvement, this mode of punishment is accompanied with evils, which tend to sap the very foundation of society, and dissolve every bond of general union. The sole right therefore, of judging and punishing offenders, for the prevention of crimes, is at length entrusted with government. It then becomes a crime in the kindred, who had been called the avengers of blood, to attempt such punishment, by their own authority. These are instances, in which, not only the political, if I may use the expression, but the moral quality of the action is altered, and even reversed, by a change of social and political circumstances. If those only are to be esteemed natural duties, which arise antecedently to society, and independently of any relation to it, and their violation offences *mala in se*; they will be found, not only few in number, but the greater part will be found to

to be unnoticed by municipal laws, as being sufficiently guarded by the moral sense and the common principles of humanity. The principal of these are the duties of religion and self preservation; and though men are to be protected and secured in the observance of these duties, the observance cannot be enforced by human laws.

The laws of nature are not thus limited. When applied to man, the laws of nature are the laws of social nature. As, I have before shewn, man is formed for a state of society and civil government. He is furnished with appetites, passions, and faculties, which in no other state have either gratification or use. In society, in civil society only, can man act agreeably to the laws of his nature. It is the state pointed out in his formation; the state, to which most of his passions, appetites, faculties, and powers are directed. It is, in truth, his ultimate state of nature. The more perfect this state is, the more it harmonizes with the whole state of man; or rather, the more general operation it gives to the laws of his nature.

If society and civil government be founded in natural principles, the laws, which naturally and certainly result from such state, are laws of nature. There are certain principles, and relations, which are common

common to all societies, and governments, in the earliest and rudest state, and continue unchanged, through every successive degree of improvement. From these principles and relations result laws and duties, which, with one consent, are denominated, by way of eminence, laws of nature and natural duties. This eminence they have derived from their permanency and universality. In the progress of society, in the natural course of improvement, new and different connexions are formed; new principles and new relations arise. Hence result new laws, and a different class of duties. These laws and these duties will vary, or rather, they will exist in one society, and not in another, according to the various degrees of improvement in each. Still if they result from principles, relations, and connexions, which arise in a natural course of improvement, they are, with the former, equally laws of nature, and natural duties. They both, in fact, result from a state of society, the natural state of man. Human laws,* founded in these principles, as they arise in society, will have the force of moral obligation. Arbitrary laws; laws, which violate the principles of the society, for which they were

* I here comprehend, as well the laws of the constitution, as civil or municipal laws.

were made, will be obeyed with reluctance. Obedience, in such cases, will, sometimes, be considered as a matter of prudence, never as a matter of conscience.

Men would be in a deplorable condition, if the moral sense enforced obedience, alike, to every act of legislation. The worst laws, when once enacted, would be received with a degree of veneration. The facility of execution would supersede the necessity of repeated examination, and frequent recurrence to the principles of the government, and the rights, interest, and sentiments of the people, without which the best intentions of a legislature, can afford no security against the danger of tyrannical laws.

SECTION II.

Different Modes, in which Obligation is sometimes discovered—have concurred to introduce a Distinction between moral and civil Obligation.

IT is not, perhaps, difficult to account for the different views, which have been entertained of civil and moral obligation.
The

The nature and principles of a government may be such as to confound many moral and natural relations. In the best constituted governments, men may be led to conceive a difference between moral and civil obligation, from the different modes, which they, sometimes, necessarily take to attain the knowledge of public and private duties. The mode of discovery is frequently different; but the efficient cause of obligation, is, in both, the same.

In all cases, the efficient cause of moral obligation arises from the relations, general and particular, in which man is placed; the sense, by which he discerns these relations, and a perception of the duty thence resulting.

The utility of the action to be performed, is not the efficient, but the final cause, the end, for which the duty is imposed. These are not set at variance, but in perfect harmony. Hence it is, that the general tendency of any class of actions becomes a safe criterion to decide, whether the performance or forbearance be a duty.

The approbation, which a person feels, of his own conduct, arises from a direct perception of right in his actions, or, that they coincide with his duty. As a social being, he finds the pleasure enhanced,
from

from a perception of their utility to society. The utility, which arises to society from his actions, becomes a practical proof of the justness of his moral perceptions, and a farther confirmation of his duty. In the common actions of life, the duty is discovered by a direct perception. This is not always the case, in the more general and extensive concerns of social and civil life. The situation is too intricate, the relations too numerous to be at once discovered and comprehended by a direct perception. This often happens in the enacting of laws, particularly in those situations, which occur, in the more active and complicated scenes of civil society. The complicated and various, existing relations, the result of which ought to point out the duty to be imposed, or the class of actions to be required, are not to be discovered and arranged with ease or certainty, by any direct contemplation. It therefore becomes the principal business of the legislator, to resort to consequences, to examine the probable operation of the law proposed, the utility of the action to be required, as the only safe criterion, where the result of the existing relations is not obvious to a direct perception. If he can discover the actions intended to be required, to be useful in their general tendency, in a civil, social, and

moral view, he may rest assured, that they will partake of the nature of original, moral obligation; for moral obligation, and final, social, and civil utility, ever coincide. The mind, however, frequently occupied with considerations of utility, is apt to rest satisfied, without seeking any farther grounds of obligation. This has doubtless concurred with other causes, to introduce the distinction attempted by our learned author.

S E C T I O N I I I .

That Punishments will have little Effect in the Prevention of Crimes, unless the Laws are so calculated, that Civil and Moral Obligation coincide.

THE sole end of punishment is, or certainly ought to be, the prevention of crimes. Under crimes, I comprehend, not only the doing of those things, which are directly detrimental, but the omission of those, which are necessary for the support and happiness of the community. For if man be a social being, it clearly follows, that he is bound, not only to forbear injuries to the society,

society, but to contribute an equal share to its support and happiness. It is not an obligation, arising from necessity merely. It is an original indispensable duty.

We have seen, that Deity has, by the strongest and most intimate relation, the relation of cause and effect, connected happiness with the virtuous actions of moral agents, misery with their vices. These are the rewards and punishments, in the government of Providence. To this system, as we have seen, man, by the original constitution of his nature, is admirably adapted. He is furnished with a moral sense, by which he perceives the right and the wrong of his actions. He is also furnished with an appetite for the approbation of others. He has, consequently, a dread of their censure. Thus he finds himself accountable for his actions. When he perceives them to be right, he is intuitively conscious, that he is deserving of approbation, when wrong, of censure, or punishment. In the same manner he judges of the actions of others.

To this constitution of nature, all civil laws, and political institutions ought to be adapted. This alone can produce and support a coincidence between civil and moral obligation. Upon no other principles will punishments be perceived to be

just and right. Upon no other principles can they have a salutary effect on the dispositions, life, and manners of men.

If, in a government, the laws constitute crimes of actions indifferent to the good of society, or require, that, which, in general, is detrimental, fear can be the only motive for the observance. In the case of a non-observance, there may be an apprehension of punishment, but there will be no consciousness of desert. The suffering delinquent will consider himself, not as guilty, but unfortunate. Others will consider him in the same light. They will be disposed rather to pity his misfortune than to censure his conduct, unless it be for a degree of impudence. In such case, punishment tends not to a general or particular prevention of crimes, by a sentimental reformation, the only end, which can justify punishments inflicted by human laws. The direct tendency of such arbitrary laws is to introduce sophistical evasions, and to confound every idea of social duty.

The opinion that such arbitrary laws, for they certainly merit no better appellation, are admissible in government, affords a pretext, for considering all laws in the same point of view, and referring all social obligation to authority, not to right. The pernicious consequences are obvious.

It

It is true that from the weakness of legislators, from their ignorance, and even from their knowlege, which may have thrown mankind at a distance, laws will, sometimes, be adopted, which are not founded in the principles of the society, for which they are made. But such are not the laws contemplated in the passage cited from Judge Blackstone. He supposes no laws to be directly binding on the consciences of men, but such as are founded in the permanent, universal principles above mentioned; that the laws founded in principles, which arise from a meliorated state of society, have not, generally, this obligatory force.

S E C T I O N IV.

Of Principles of government as they affect the moral obligation of laws.—Their difference in this respect.—The British Government.—The Government of the United States.

FROM the different nature or constitution of governments, their principles and the spirit of their laws will be different. Fear, supported by the terror of punishment,

ment, or a superstitious veneration for the reigning family, or both, are the principles, that is, the great object of the laws, and the sole motive of obedience, in a despotic government. Monarchy does not lose sight of the principle of fear, but blends with it, chiefly in regard to the order of nobility, the principle of honor, as it is there understood, a sentiment merely personal, and devoted to all the caprices of opinion. The principle of an aristocracy, as it relates to the subject, differs little from despotism. A republic, or rather a democratic republic, has for its principle, that is, the end of its institution, and the motive of observance, a rational and sentimental attachment of the people to the community, its laws, and government. A mixed government partakes of all the principles, each of which predominates, in proportion to the prevalence of one or other of its constituent parts.

Where fear is the governing motive of every social action, all happiness in social intercourse, all social improvements, are not neglected only, but are opposed by the genius of the government. Blended with fear, however, *honor*, that principle of all the most capricious, sometimes irradiates, but more frequently obscures the social horizon. Neither of them have any principal regard

to

to the happiness of the citizens, or to the interests of morality.

The principle of a democratic republic, a sentimental attachment to the community, its institutions and laws, needs not, neither can it endure, the intervention of the other two principles; principles which regard the whole society, as constituted to gratify the passions and appetites of one, or a few individuals. Such a mixture of heterogeneous principles in a government must, of necessity, have a very general effect upon its legislation, upon the interpretation, and execution of its laws. It will unavoidably dictate many acts and rules of civil conduct, which can, in no view, claim the sanction of the moral sense. Such is the government of Great Britain.

. The spirit of laws is directed by the effective principle; the principle, by the constitution, or nature of the government. Perhaps, the laws of Great Britain are, in general, the best, which can consist with the heterogeneous principles of that government. If this be true, Judge Blackstone's distinction between those laws, which are morally, and those which are only politically binding, is, so far as it applies to those laws, just and necessary. Still it is a severe, though an undesigned stroke at the principles of that government. Can

Can there be a more sure, a more safe criterion for deciding the goodness of any government, than the tendency of its principles in legislation? That government, that constitution of society, the principles of which dictate those laws, and those only, which are adapted to the present state of men and manners, and tend to social improvement, which are influenced by a sense of moral obligation, and sanctioned by the laws of nature, not of savage solitary nature, but of social nature, in its improved and improvable state, is uncontrovertibly good. So far as it deviates, it is clearly faulty. Upon a candid examination, upon a fair comparison, it will be found, that a democratic republic is alone capable of this preeminence of principle.

It is true, that in any government, circumstances foreign to its principles, may, and in this state of imperfection, frequently will, concur to the adoption of bad laws. But if the constitution and principles be good, such laws will not have a long continuance.

The governments of the several American states, as well as that of the Union, are of the democratic republican kind. We ought to know their principles, to study well their tendency, and to be able both in theory and practice to exclude all foreign principles.

Judge

Judge Blackstone was a British subject, highly in favor with the government. He was enamoured with its principles. He has blazoned them with all his rhetoric, and not the least those, which are the most faulty. Probably to these, notwithstanding his great abilities, he was chiefly indebted for his preeminence. Unhappily, his Commentaries are the only treatise of law, to which the law students, in these states, have access. In every section of the criminal code, and no less, in every question of a civil nature, where the prerogative of the Crown, or the privilege of the Peers intervene, the principles of the British government have given a cast to his reasonings. I wish not to detract from the merit of the author, as a British subject; a writer who has, in a masterly manner, delineated the laws and jurisprudence of a foreign nation, under a government very different from our own.

There are many things in his Commentaries, which accord with the principles of the American governments, and which are founded in the universal principles of jurisprudence. These, however, will be found to be derived from the democratic part of the British constitution. The student should carefully learn to distinguish those principles, which are peculiar to that

government, or governments of a similar constitution; to distinguish the reasonings, which are accommodated to those principles, or solely dictated by them. He ought to know, that they are not universal; that in a democratic republic, they are wholly inadmissible. This is not enough. He should be led through a system of laws applicable to our governments, and a train of reasoning congenial to their principles. Such a system we yet want. Surely genius is not wanting in America. Can none be found equal to the arduous, the important task? Perhaps, we are not yet fully ripe for the undertaking. Years may be necessary for its completion. But he who shall only prepare the rudiments, will deserve highly of his country.

SKETCH

S K E T C H VIII.

OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA.

SECTION I.

Political situation of the States, previous to the establishment of the present Federal Government.

THE government of the United States of America exhibits a new scene in the political history of the world ; a number of integral republics, each claiming and exercising all the powers of internal sovereignty, within the limits of their respective jurisdictions, formed into one general government, with powers of legislation for all national purposes, and the power of executing all their laws, within the several states, on the individual citizens, and that independently of the local authority. The experiment was new, and the success has, hitherto, exceeded the most sanguine expectation of its advocates. A situation so complicated, so different from that of simple governments, which have been the subject of these sketches, will have an effect,
if

if not upon the laws of nature, from which the general principles are ultimately derived, yet to give a different modification to those principles, owing to the different combinations and relative circumstances of the constituent parts; and will have an influence on its organization, and the execution of its laws.

To examine these principles, and the several excellences and defects to be found in them, and the national government, to which they have given rise, is a subject of importance to every citizen of the Union. The novelty of the subject, in which the example of other nations furnish little or no light of experience, and in which sufficient time has not yet been allowed for a full maturity of observation on the effects of this system in operation, renders it a task of difficulty, and of dubious success. I do not aspire to a perfect system, to a full investigation of the subject. Mine is a humbler task. I aim only at sketches.

The several American States, while colonies, or provinces of the British empire, had, in general, no direct connexion, or governmental dependence on each other. They were, though situated in the same vicinity, and professing allegiance to the same common sovereign, connected only through the government of Great-Britain,
the

the common head. There existed a similarity of manners, which might well be called national. There were, indeed, provincial differences; not greater, however, than are to be found in the island of Great-Britain, or even in England alone. As Americans, they had little national sentiment. It was by different channels centred in Great-Britain. Any collected, permanent, national sentiment was opposed by their foreign connexion. It was the policy of the British government to foment divisions in the colonies, to a certain degree, and to cherish their local prejudices. The similarity of their circumstances, however, in the difficulties of making settlements in a wild, uncultivated country, at a great remove from any part of the civilized world, produced some degree of direct attachment. This was increased by the necessity of defence against a common enemy. Bloody wars waged against them by the savages, who were instigated and assisted by the French, the ancient enemies of the English, suggested the expediency of common counsels, and united exertions. Consultations were held, by Delegates from the several provinces; measures for the common defence were devised, and afterwards executed, in pursuance of their mutual counsels. This was the germ of that general union of counsels and sentiments, which produced the American revolution.

It for a time acquired its utmost force from the oppressive measures of the British government, which equally affected the liberties of all the colonies, now the United States of America. The first inhabitants had brought with them all the democratic principles of the British government, and had communicated them, nearly free and unmixed, to their descendants. Their love of liberty, and a knowledge of their rights, was not a little increased, both by an equal enjoyment of rights and property, under mild and equitable laws, mostly formed by themselves, and by the disputes, to which extraordinary claims of power, on the part of Great-Britain, had given occasion. The principles of Monarchy and Aristocracy, had, however, prevailed, more, or less, in almost all the colonial governments. They were, in form, epitomes, of the British government. In each, there was a Governor, representing the King; a Council, representing the House of Lords; and an Assembly, composed of the Representatives of the People, the Commons of America. In most of the colonies, the Governor and Council were mere creatures of the Crown. They were wholly dependent on the King. He appointed and removed them, as well as the Judges, at pleasure. This created a powerful aristocratical influence, altogether

ther hostile to the liberties and interests of the people. Happily, the plan of establishing a hereditary Nobility in America, was never adopted. Had such an establishment been made, at an early day, it would, by securing a permanent interest in the principles of the British government, and by holding out the tempting bait of honors to the more wealthy and influential characters, have firmly, perhaps durably, riveted the shackles of slavery on the Americans.

When the measures, which gave rise to the American revolution, were adopted by the government of Britain, the body of the people had not been corrupted by these principles. The sentiments of attachment, which originated in their descent from a common stock, and was cherished by a similarity of circumstances and adventures, had been strengthened by their common counsels, and common exertions, in a long and bloody war. These common exertions had given them an opinion of their united importance. A more general acquaintance had been introduced, and a reciprocation of counsels and good offices, tended to soften and remove those local prejudices, which had intervened, and which had been artfully fomented, by the jealous temper of the mother government. A similarity

of

of situation, and a similarity of danger, from the same quarter, united their interests and sentiments, and suggested the idea of again uniting their counsels, to obtain redress. This produced the first Congress. A number of delegates from the several colonies assembled for mutual council, on the common situation, in which they were placed, by the oppressive measures of the British government, and laid the foundation of the American republic.

A second Congress was met, when Great Britain commenced her military operations against what she termed her rebellious colonies. From that time, a Congress directed the affairs of America. The fourth of July, 1776, the thirteen colonies were, with their general consent, declared by Congress, Free and independent States. The several states, now independent, adopted or continued republican forms of government, and entered into articles of confederation for their mutual defence, and the direction of national measures. The national government which was to be in a Congress of delegates from the several states, had little more than the power of a diplomatic body. They were invested with neither the power, nor the means of carrying their ordinances into execution. The states governments retained the only efficient

efficient power within their several jurisdictions. Common danger, pressing from every quarter, for a time, united their councils, and supplied a degree of energy to their measures, which carried them triumphantly through the war, and secured their independence ; but the principle of this energy was wholly foreign to the government. No sooner was the war ended, than the total inefficiency of the federal government was discovered. An enormous debt had been contracted, and public credit was in the lowest and most humiliating state of depreciation. Congress found themselves, in effect, possessed of neither legislative nor executive powers. Their ordinances were disregarded. Many states neglected or refused to furnish their quotas of the national expenditures, the price of their liberty and independence. In some states, the treaties made with foreign nations, particularly with Great Britain, were disregarded, or openly violated. The authority of Congress was wholly lost. The states had, in effect, become so many independent nations. There was no more a national sentiment, or the pursuit of a national interest: Ancient prejudices, which had subsided, during the struggle for liberty, were rapidly reviving. Each state pursuing its local and

separate interests, seemed to bid defiance to any national union. The effect of this situation began to be apparent in the manners of the people, and in the administration of the states governments. They were verging towards the situation of small, independent tribes in the same vicinity. This situation visibly contracted the views of the people, and formed them to a spirit of faction. The states governments were mostly incapable of pursuing any energetic system of administration. The whole country was clearly in a state of civil and political retrogradation.

The effect on the minds of the people was no less moral than political. A want of public credit, and its concomitant evil, a depreciating paper currency, had nearly ruined their morals, their industry, and their commerce, as well as private credit. Many other causes, not necessary here to enumerate, concurred to heighten the evil. Dangerous insurrections actually existed in some states, and others trembled in expectation of the like event. Many began to suppose that the liberty, for which they had risked so much blood and treasure, was but a phantom of the imagination; that an equal enjoyment of rights was, under any arrangement, incompatible with political happiness. The wisest and best
citizens

citizens had conceived, that an energetic system of national government, could alone give any reasonable hope of reviving the ruined state of commerce, of restoring public and private credit, of giving any degree of nationality to the Union, of securing the faith of public treaties, and in a word, of preventing or repelling the numerous impending evils, which threatened to plunge the country into anarchy, and all the horrors of a civil war. Congress, who were fully sensible of the inefficiency of their powers, to any national purpose, recommended it to the states to meet in Convention, by their Delegates, to deliberate on a plan of national government, which might be equal to the exigencies of the states. The present constitution of the United States of America, was the result of their deliberations. This constitution, as a *unique* in federal politics, originated in an actual, deliberate agreement between the states, and was ratified by the free consent of the people of each state, by their Representatives, chosen for that purpose.

Briefly to examine the principles of this government, both in its organization and operation, and to enquire how far it is adapted to the situation of the country, already divided into separate states, will be the subject of the following sections.

S E C T I O N II.

Difficulties in forming an efficient Federal Government.—Summary view of the two principal Forms, which have heretofore been adopted, that of ancient Greece, and the United Provinces of the Netherlands, with their Defects.—A concise view of the present Federal Government of the United States of America.

THE political situation of the American States, occasioned many anxious apprehensions, as to the practicability or expediency of constituting an efficient, national government. It created numerous difficulties, which experience alone could obviate. It was by many apprehended, that an efficient, national government could not consist with any considerable degree of authority, in the states governments; that it would encounter all the absurdities of a sovereignty within a sovereignty; and that one, in the end, must be annihilated by the other. According to the various opinions concerning the utility and necessity of an energetic, national government, some warmly supported, while others deprecated the idea of a collected sovereignty. The
magni-

magnitude of the object excited the anxiety of every class. Many dreaded an arbitrary power in a general government, uncontrouled, by the authority of the states. Some, alarmed at the danger, which threatened a dissolution of all national union, and willing to risk a desperate remedy, which, they imagined, could alone prove effectual, would readily have sacrificed the whole authority of the states, to a national legislature. They wished a consolidation of the whole into one efficient government.

Others, from a more happy train of thought, or more mature reflection, conceived the plan of reconciling the general and particular powers, not so much by a subordination of one to the other, as by a precise limitation, in respect to their several objects, and rendering them mutually subservient, and even necessary to each other's efficiency. They perceived, that it was not practicable, perhaps, not even desirable that the same regulations, the same mode of holding property, and conducting internal policy, should take place through the whole. They perceived, that in a country so extensive, soil, climate, and circumstances, at first, accidental, had introduced local differences of manners, habits, interests, and pursuits; that these differences were,
genc-

generally, limited by the limits of the several states ; that they might give rise to an emulation in arts and industry, and lay the foundation of an extensive national intercourse, by way of exchange ; but, that it would be impossible to comprehend them under any general regulations and uniform national laws. There were local legislatures already established, equal to all local occasions. They perceived, that the national interest was not concerned to interfere in matters of this nature. The objects of the national government would be more general. The great idea was to give a national individuality to the states collectively. It was apprehended, that the different interests, properly represented, might be modified, compromised, and directed, in such manner, that instead of those interferences and irreconcilable oppositions, which must frequently arise from too great a degree of independence among the several states, they might be bro't to coalesce, and add no less to the individual, than national prosperity. The point of great difficulty was, to render the acting members of the federal government, accountable, as well to the states governments, as to the people ; and to constitute the federal government, sufficiently energetic, to carry into execution, by an authority delegated for that purpose, every

every necessary, national measure; and yet, so to limit the authority, in exercise, that no danger might reasonably be apprehended to the rights of the people, or the states in their particular jurisdictions.

Several instances occur, both in ancient and modern times, of small states confederated, with a view to a general union, in the pursuit of national measures. The great end in view, and which has always been a desideratum in federal politics, was to bring the people to have a sense of a national interest, and all the states of the confederacy, effectually to act in concert, in those measures, which relate immediately to the good of the whole. We may now reckon three principal modes, in which this has been attempted.

The first, because the most ancient mode, is by a council empowered to legislate upon the several states composing the confederacy. Of this kind was the Council of the Amphictyons, at the head of the confederated states of ancient Greece. In this case, as none but states can refuse to obey, a delinquent can be nothing less than a state, already provided with arms and councils for a formidable opposition. To enforce the decrees of the confederate council, which we may call the laws of the union, it becomes necessary, in case of a refusal

refusal of any part, to draw out the forces of the complying states, and to compel obedience by dint of arms. The history of ancient Greece, is, for many years, infamous for a succession of such wars. Such were the Sacred, and many other wars. The famous Peloponnesian war, which raged with almost unabated fury nearly thirty years, may, in a great measure, be attributed to the same cause, the want of an efficient power in the national council. Such ever have been, and such ever will be the effects of this kind of government, unless, like the late Congress of the United States of America, they suffer their laws and ordinances to be violated with impunity; and in this case, the consequences will be the same; the government will soon sink to the lowest point of degradation, and tremble on the brink of evanescence.

The second mode is, by a council, empowered to propose measures to the confederated states, subject to the ratification of the states individually, before they acquire the force of laws, or can be carried into execution by the general authority. The government of the United Provinces of the Netherlands, furnishes us with an example of this second mode. The States General are the grand council of the confederacy. This council, though pompously

ously stiled THEIR HIGH MIGHTINESSES, have, in all matters of national concern, whether of greater or less moment, a power to propose only. The several states have reserved to themselves the right of ratification. No law can be constitutionally binding, until it have been ratified by each. The *veto* of a single state, and even, in some instances, of a single corporation, may disconcert, and actually has disconcerted the national counsels, in measures of pressing necessity. Frequently, on great emergencies, such has been the delay, before all the states could be brought to agree, that the opportunity of acting has been wholly lost. This has induced the States General, aided by the hereditary Prince of Orange, who, as Stadtholder, administers the republic, and whose power and influence are great, sometimes to act without the authority of the smaller states, and even against their determinations. Such a disregard to the constitutional principles of their union, has, among that people, not remarkable for a spirit of faction, produced high domestic violences, and convulsed the government, with dangerous insurrections.

The third mode is by an organized government, impowered, in all matters, which relate to the collective interests and prosperity

perity of the confederacy, to legislate upon the citizens of the several states, as citizens of the Union, and to carry the laws into execution, by ministerial officers of the same government. Of this form of federal government, we have the first complete example, in the present constitution of the United States of America. In this government, the National Legislature, in all matters, which come within the sphere of their constitutional authority, legislate, not upon the states collectively, but upon the citizens of the union. Their measures and laws are valid and binding, without any ratification beyond their own act. The constitution, and all acts of authority, warranted by the constitution, are the supreme law of the land, and binding in all decisions, as well in the courts of the several states, as in the federal courts. To prevent different constructions, which might arise in different tribunals, under the bias of local authority, influence, or prejudice, the judiciary, for all cases arising under the constitution and laws of the Union, and those cases of public or private controversy, to which the state jurisdictions are incompetent, or, unavoidably liable to a partiality dangerous to general justice, hold their offices by appointment of the supreme power of the confederacy, and are amenable only to
that

that power, and their decisions are carried into effect by ministerial officers appointed under the same authority.

While the federal government is vested with the supreme authority, in all matters, which involve the general welfare of the Union, considered in a national view, the states governments, within the limits of their several jurisdictions, retain, as sovereign, all those powers, which, in their due administration, most endear the civil state to mankind. To them it belongs, among their own citizens, to regulate the mode of acquiring, and to secure the acquisition of property, to animadvert upon morals, and to restrain and punish those crimes, which attack private property, violate personal security, or in any way, disturb the peace of their communities.

S E C T I O N III.

Organization and Powers of the Federal Government.—Limitation of its Powers.—Principles of Accountability.—Brief View of its effects in Practice.

THE government of the United States of America is constituted with legislative, judicial, and executive powers, vested in distinct and separate departments. The legislative power is vested in a Congress, consisting of a Senate, and House of Representatives, whose powers in legislation are mutual. The Representatives are chosen by the people of the several states, every second year, and are apportioned by the number of people in each state, to be ascertained by an actual enumeration, taken once in every ten years.

The qualifications for the Electors of the Representatives are not reduced to a uniform rule throughout the Union; but are to be the same in each state, as for the electors of the most numerous branch of the state legislature. To be eligible, as a representative, three qualifications are necessary, neither of which introduce any odious distinction of classes. To be eligible, a person

person, must have attained the age of twenty-five years, have been seven years a citizen of the United States, and at the time of his being elected, an inhabitant of the state, for which he is elected. Property is, in most of the states, a qualification, both of electors and candidates; so far it is a qualification for the electors of the federal representatives; but not for candidates. Hence it may happen, that a person may be elected, who has not a right of suffrage in the election. This is, at least, a slight inconsistency, which it would have been desirable to have avoided, by extending, more equally and uniformly, the right of suffrage. It is probable, however, that difficulties, on this point, would have arisen from an attachment to local usages.

The Senate of the United States is composed of two Senators from each state, chosen by the Legislature. The Senators are divided into three classes. The seats of one class are vacated every second year, and the vacancies supplied by the legislatures of the states, to which the senators of such class respectively belong. Their election is, therefore, in reality, sexennial, and the senate can never be composed of more than one third new members. There are three qualifications for a senator.—He must have attained the age of thirty

Y 3 years,

years, have been nine years a citizen of the United States, and at the time of his election, be an inhabitant of the state, for which he is chosen.

We may, with satisfaction observe, that in the qualifications of the senators, there is no feature of aristocracy, nothing, which tends to a distinction of ranks. The qualifications, both of the senators and representatives, tend only to secure, in the federal legislature, a maturity of experience and abilities, an attachment to the national interest, and the interests of the respective states.

Each House chuse their own officers, except, that the Vice-President of the United States, for the time being, is President of the Senate, and are sole judges of the elections, returns, and qualifications of their own members. The times and places of holding elections for senators are prescribed by the legislature of each state; but Congress have power, by law, to make, or alter such regulations, except, as to the place of electing senators. This exception was made, that Congress might not have it in their power to remove the state legislatures from place to place, at their pleasure. Would it not have tended to secure a more equal representation of the national interests, and a more ready acquiescence in
the

the laws of the Union, had a constitutional provision been made, for a division of each state, in the election of representatives, into districts, agreeably to a just apportionment? I apprehend it to be of sufficient importance to claim a place among the laws of the constitution. Congress are to assemble, at least, once in every year. Each House is to keep a journal of its proceedings, and to publish the same from time to time, with the yeas and nays, which are to be taken and entered on every question, if desired by one fifth of the members present.

Beside the ordinary powers of legislation, the house of representatives have the sole power, in the national government, of bringing impeachments, and the senate have the sole power of trying such impeachments.

No bill can pass into a law, without the concurrence of both houses, and bills may indifferently originate in either. There is, indeed, one exception, and that a wise one, relative to bills for raising a revenue. These must originate in the house of representatives. The revenue is to be raised upon the people, to whom the representatives are amenable, not upon the states collectively.

To provide against a servile dependence, and to remove temptations to corruption, both the senators and representatives are to receive a compensation for their services, to be ascertained by law. They enjoy certain privileges, and are subjected to certain disabilities. They are, except in cases of treason, felony, and breaches of the peace, privileged from arrests, during their attendance on the business of their appointment. To prevent an undue influence, in any measure or department of government, senators and representatives, during the time, for which they are elected, are incapable of being appointed to any office, under the United States, which has been erected, or the emoluments of which have been encreased, during that time; nor can a person, holding any office under the United States, be a member of either house, during his continuance in office.

In the legislative functions of government, the President has a deliberative voice, but not a final negative upon any act. Every bill, which shall have passed the Senate and House of Representatives, must, before it becomes a law, be laid before the President. If he approve, he signs it, and then it has all the force of a law. If he disapprove, he returns it, with his objections in writing, to that House, in
which

which it originated. If two thirds of each House, on reconsideration, still adhere to their former opinion, it becomes a law, notwithstanding such objections. If the President neglect to return a bill for ten days after it shall be laid before him, it becomes a law, in the same manner as if he had approved and signed it, unless the return be prevented, by the adjournment of Congress. The same proceedings, under the same regulations, are necessary to the validity of every order, resolution, or vote, to which the concurrence of both Houses are required, except in cases of adjournment.

For the purpose of directing and limiting the powers of Congress to those objects only, which are of national necessity, or utility; of drawing a line between the several branches, and to prevent, in the exercise of their proper functions, any interference between the federal and the states governments, the constitution has pointed out generally the objects of federal legislation, and has limited and modified the several powers of the general government, as well as the powers of the individual states.

Congress are, by the constitution, empowered to lay and collect taxes, duties, imposts, and excises, for the purpose of paying the debts of the Union, and providing

viding for the common defence and welfare of the United States; to borrow money on the faith of the Union; to regulate commerce, both external and internal; to establish a uniform rule of naturalization, and uniform laws upon the subject of bankruptcies; to coin money, regulate the value of coins, fix a standard of weights and measures, and to provide for the punishment of counterfeiting the securities and current coins of the Union. They are empowered to facilitate and secure an extensive national communication, by an establishment of post-roads and post-offices; to promote the progress of science and useful arts, by securing, for a limited time, to the authors and inventors, an exclusive right to their respective writings and discoveries. To this body it is referred to define and punish piracies on the high seas, and offences against the laws of nations. They have the power of declaring war, granting letters of marque, and reprisal, and of making rules concerning captures on land and water; to raise and support armies, with this restriction, that no money shall be appropriated to that use for a longer term, than two years; to provide and maintain a navy; to make rules for the government both of the land and naval forces; to provide for calling forth the militia

militia to execute the laws of the Union ; to suppress insurrections and repel invasions ; to provide for organizing, arming, and training the militia ; and for their government, while in actual service. The States, however, have the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. Congress are, finally, empowered, to make all laws necessary and proper for carrying into effect, in the government, or any department, or office of the United States, all the powers, with which they are invested, by the constitution.

Such are the general powers, with which they are entrusted, for the purposes of national government.

To render these powers, in exercise, equal in every part of the Union ; to prevent any preference of one state to another ; to guard against the dangers of oppression ; of profligacy in the national expenditures ; of peculation in its officers, and, if possible, to avert every tendency to corruption, in the principles of the government, certain restrictions and limitations are provided. It is expressly provided, that all taxes, duties, imposts, and excises, shall be uniform throughout the United States ; that no preference shall be given, by any regulation

lation of commerce, or revenue, to the ports of one state, over those of another, nor the commerce of any state be impeded, by obliging the vessels bound to or from one state, to enter, clear, or pay duties in another.

Congress may not suspend the privilege of the writ, of *Habeas Corpus*, unless when in times of invasion, or actual rebellion, the public safety shall require it. No bill of attainder, the oppressive engine of state, in many governments, can be passed by the federal legislature. No capitation, or direct tax can be laid, unless it be in proportion to the census of the inhabitants of the several states. No money is to be drawn from the national treasury, but in consequence of appropriations made by law; and an account of the receipt and expenditures of public monies is directed to be published, from time to time, for the information of the people. The national government are prohibited to grant any title of nobility: and to exclude an undue, foreign influence, in measures of government, no person holding any office of profit, or trust, under the United States, may, without the consent of Congress, accept of any present, emolument, office, or title whatever, from any king, prince, or foreign state.

It

It is provided that no state in the Union shall enter into any treaty of alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit, make anything but gold and silver coin a tender in the payment of debts ; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No state may, without the consent of Congress, lay imposts, or duties on imports, or exports, except what shall be absolutely necessary for executing its inspection laws ; and the nett produce of all duties, and imposts, laid by the several states, are to be to the use of the United States, and all laws, for that purpose, are subjected to the revision and controul of Congress. No state, without the consent of Congress, may lay any duty of tonnage, keep troops or ships of war, in times of peace, or enter into any agreement, or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger, as not to admit of delay.

The executive power is vested in a President of the United States, who holds his office for the term of four years. For the election of the President, each state is to appoint, in such a manner as its legislature shall direct, a number of electors, equal to the

Z

whole

whole number of representatives, to which such state is entitled. No person is capable of being appointed an elector, who, at the time, shall be a senator, or representative in Congress, or hold any office of profit, or trust, under the United States. Congress have power to determine the time of choosing the electors, and the day of giving their votes, which is to be the same in every state. The electors are to meet in their several states, and to vote, by ballot, for two persons, one of whom, at least, shall not be of the same state with themselves. The votes of the electors are to be transmitted, sealed, to the President of the senate, at the seat of government of the United States, and to be counted in presence of the senate and house of representatives. The person, who shall have the greatest number of votes, being a majority of the whole number of electors, is appointed President. If there be more than one, who have such majority, and have an equal number of votes, the house of representatives are immediately to chuse, by ballot, one of them for President; and if no person have a majority, the same house are to chuse a President from the five highest on the list. For this purpose the votes are to be taken by states, and a majority of all the states is necessary to a choice. After
the

the choice of a President, the person having the greatest number of votes of the electors, is the Vice-President. If there be, in this case, two, who have an equal number of votes, the senate are, by ballot, to chuse one of them for a Vice-President.

The qualifications for the office of President, are, that he be a natural born citizen, or a citizen of the United States, at the time, when the constitution was adopted; that he have attained the age of thirty-five years, and have been fourteen years resident within the United States. In case of the removal of the President from office, or of his death, resignation, or disability to discharge the powers and duties of his office, the same devolve on the Vice-President; and Congress are empowered to make provision to supply the place, both of the President, and Vice-President, by declaring, what officer shall supply the office, in such case.

The President is to receive a compensation for his services, which can neither be increased nor diminished, during the time, for which he shall have been elected; nor may he, during that period, receive any other emolument from the United States, or either of them. He is commander in chief of the army, navy, and of the militia, when in actual service. He is entrusted

Z 2

with

with the power of granting reprieves and pardons, except in cases of impeachment. He has the power of making treaties. In this, however, he must have the advice of the senate, in which two-thirds of the senators present must concur. He is, likewise, subject to the advice of the senate, entrusted with the power of appointing ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointment is not otherwise provided for by the constitution, or established by law. The President is to fill all vacancies, which shall happen, in the recess of the senate, by filling up commissions, which shall expire at the end of the next session.

It is made the duty of the President to give to Congress information of the state of the Union, and to recommend to their consideration such measures as he shall judge necessary and expedient. He has the power to convene both houses, or either of them, upon extraordinary occasions; but he has no power to prorogue or adjourn them, unless the two houses disagree, in respect to the time of adjournment. He is to receive ambassadors, and other public ministers, to take measures for the faithful execution of the laws, and to commission all officers of the United States. The

The President, Vice-President, and all civil officers of the United States, are removable from office, on impeachment, and conviction of treason, bribery, and other crimes and misdemeanors, and are further liable to indictment, trial, and punishment, according to law.

The judicial power of the United States is vested in one supreme court, and such inferior courts, as Congress shall, from time to time, ordain and appoint. The judges of all the courts hold their offices during good behaviour; and at stated times, are to receive for their services a compensation, which may not be diminished, during their continuance in office.

The judicial authority is extended to all cases, in law and equity, arising under the constitution, and laws of the United States, and treaties made under the same authority; to all cases of admiralty and maritime jurisdiction; To controversies to which the United States shall be a party; to controversies between two or more states; between a state and the citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state and its citizens, and foreign states, citizens or subjects.

Where a dispute shall arise between two or more states, which cannot be compromised by the parties, it is doubtless eligible to refer the decision to the national authority. The danger, which may arise from an attempt to execute the laws of the Union, in this case, upon a whole state, is less to be dreaded, than the remaining alternative, an appeal to force, between the states in controversy. But this mode of executing the laws of the Union, ought not to be hazarded, unless to avoid a greater inconvenience. Individual claims upon any of the states, should be submitted to the laws, or the equity of the state. The case may, indeed, happen, that an individual will be injured, without redress. Should this case happen more frequently, than it probably will, it can never be of a magnitude sufficient to justify a degradation of the authority of a state, or to risk the peace of the Union, by attempting to execute its laws on the states collectively.

Ample provision is made to secure among the several states a mutual confidence ; to establish, among the citizens of the whole, a reciprocal enjoyment of rights, in their public and private intercourse ; to cultivate and extend a national sentiment, in every part of the Union, and to prevent those injuries, which arise from local laws and customs.

Full

Full faith and credit is to be given, in each state, to the public acts, records, and judicial proceedings, of every other state. The citizens of each state are entitled to the privileges and immunities of citizens in every state. A person charged, in any state, with treason, felony, or other crime, and flying from justice, shall, if found in any other state, be delivered up, to be removed to the state having jurisdiction of the crime. No person holden to service or labor in one state, under its laws, escaping into another state, shall in consequence of any law, or regulation in that state, be discharged from such service or labor; but shall be delivered up, on claim of the person to whom such service or labor may be due.

New states may be admitted by Congress, into the Union, but no new state may be erected or formed, within the jurisdiction of any other state, nor any state formed by the junction of two, or more states, or parts of states, without the consent of the states concerned, as well as of Congress. The United States are holden to guarantee to each state in the Union a republican form of government, and to protect each against invasions, and on application of the legislature, or, in certain cases, of the executive, against domestic violence.

There

There are other clauses, which are intended as a declaration of rights, to guard against an undue exercise of power, in the administration of the federal government, as it may affect the rights of the several states, or individual citizens.

It is declared that treason against the United States, shall consist only in levying war against them, or adhering to their enemies, giving them aid and comfort; that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act; or on confession in open court. Congress have the power to declare the punishment of treason; but no attainder of treason shall work a corruption of blood, or forfeiture, except during the life of the person attained. They can make no law respecting the establishment of religion, or prohibiting its free exercise; no law which may abridge the freedom of speech, or of the Press, or the right of the people freely to assemble and petition government for a redress of grievances, or infringe the right of the people to bear arms.

Provision is made to prevent oppression from quartering soldiers on the people, and from unreasonable search, or seizure, on general warrants, without probable cause, supported by oath or affirmation. No person

son may, for the same offence, be twice put in jeopardy of life or limb, be compelled, in any criminal cause, to witness against himself, or be deprived of life, liberty, or property, without due process of law. Private property may not be taken for public use, without due compensation.

It is particularly provided, that no person shall be holden to answer for a capital, or otherwise infamous offence, unless, on a presentment or indictment of a grand jury, except, in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; that in criminal prosecutions, the accused shall enjoy the right of a speedy public trial, by a jury of the state and district, where the crime shall have been committed, if committed within the limits of any state; to be confronted with witnesses against him; to have compulsory process for witnesses in his favor, and to have the assistance of council.

In trials at common law, when the value in controversy exceeds twenty dollars, the right of trial by jury is preserved. Here let us reflect. In a matter of so much consequence, as the trial by jury, would it not have been better to have guaranteed it to the citizens, in every issue of fact, at common law, without any discrimination of the value of their demand?

Excessive fines may not be imposed, nor cruel and unusual punishments inflicted. It is finally declared, that the enumeration of certain rights, in the constitution, shall not be construed to deny or disparage others retained by the people, and that the powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

In simple governments, an express limitation of powers is necessary, on the part of the rulers only. The limitations on the part of the constituent members, are implied in the duty of obedience to the constitutional acts of government. In the federal government, the situation of the constituent members, more involved, than in simple governments, rendered a different provision necessary.

The members of the federal government, though consisting ultimately of the same individuals, may be considered in two distinct views; individually, as citizens of the Union, and collectively, as formed into several states, each, within its own limits, vested with rights and powers of legislation, adequate to every civil regulation, merely internal. The state legislatures might, either in the objects, or the subject matter of their regulations, interfere with that authority, which the collective national interests, the

the peace, happiness, and prosperity of the whole require should be exercised by the national government alone. To prevent an evil, of a tendency so fatal, in a national view, is apparently the principal end of all the limitations on the powers of the several states, and their legislative bodies. The federal government, designed to embrace only general, and national objects, and not extend to the merely internal regulations and policy of the individual states, it was found, in respect to its objects, to be less involved, and its powers capable of a more precise enumeration and definition. For this reason few, and those pretty general limitations of the powers of the federal government, are inserted. Instead of particular, enumerated instances, in which its powers are limited, the same end is more fully attained, by a declaration, which, in effect, denies to Congress, the exercise of any farther, or other powers, than those, which are delegated by the constitution, and reserves to the states and the people, all those powers and rights, which are not so delegated. This, as it takes away every pretence for claiming constructive powers, in derogation of the powers of the states, and the rights of their respective citizens, if not the only effectual, is clearly the safest mode of limiting

miting the powers of a government thus constituted.

The accountability of the rulers is a prominent feature, in the federal constitution. In securing this important object, great attention has been paid to the peculiarity of the situation of the constituent members, both as states, and as citizens. The senators of the United States, appointed by the legislatures of the several states, and from time to time amenable to them, may well be considered as guardians of the rights of their respective states against all encroachments of the national government.

The representatives in Congress, elected by the people, and accountable to them, through the means of biennial elections, are bound by all the ties of interest and affection, to watch over the rights of the citizens, and the rights of the several states, with which their electors are more immediately connected.

The right, which once in four years, devolves on the legislatures of the several states, of appointing the electors of the President and Vice-President of the United States, or of directing their appointment by the people, secures to the states and to the people, a powerful check on the executive of the federal government.

The

The judges, appointed by the President, with the advice of the senate, to hold their offices during good behavior, secure of their compensation, without the fear of diminution; and subjected with all other officers of the national government, to removal by impeachment; and punishment by the laws of the land, for male-administration, are placed in a state of accountability, blended with a degree of independence, from which can alone be expected an inflexible integrity of conduct, in that department.

This constitution of government, founded in the same principles as the constitutions of the several states in the Union, as nearly as the relative situations admit, and formed on the same plan, exhibits, in theory, the most beautiful system, which has yet been devised by the wisdom of man. It is true, that this form of federal government is a new phenomenon in the political world. Hardly a shadow of such principles and powers, as it relates to the practice and execution, in a federal union of states; is to be found in the history of ancient or modern politics. In this age of improvements, no less in the science of government, than in other sciences, its novelty will not be made a serious objection; yet it must be acknowledged, that the consistency of these principles in operation,

tion, and their efficiency, in point of practice, might still be considered as problematical, had they not, in a good measure, been evinced by actual experiment. Solely an impression of the efficiency of the federal government, favored, perhaps, by its national magnitude and importance, added, at the instant of its organization, a degree of energy to the states governments, and put an end to those factions and turbulent commotions, which made some of them tremble for their political existence. The legislatures of the several states, under the auspices of this government, appear to have exploded their former systems of local and temporary expediency, and founding themselves more generally on the basis of moral and national justice, have given a force and consistency to their laws, and inspired a confidence among the citizens, the want of which had almost annihilated private credit. The authority of the federal government rendered this confidence general and reciprocal. Its beneficial influence was not confined to the limits of the Union. It extended to distant countries, and produced the happiest effects in the commercial intercourse of the citizens with foreign nations.

The administration of this government, by discovering the national resources, uniting

uniting and directing them to the proper objects, by an almost instantaneous impulse, restored public credit and national faith, which had long been in a state bordering on desperation, to a degree of respectability, of which few examples are to be found in the history of nations. These operations afforded means, and added vigor to industry among every class of citizens. Agriculture, commerce, arts, and manufactures, have felt a new, and more powerful stimulus. The spirit of enterprise, without which nothing great is ever to be expected, has, by the extensiveness of the prospects, and the magnitude of the objects presented, been productive of effects, of which the Americans had, before, hardly entertained a conception. In such a change of circumstances, such a novelty of prospects and security of hope, an intemperance in the spirit of enterprise was, in some measure, to be expected. Accordingly, in too many instances, it degenerated into speculating projects, the influence of which on morals were, for the moment, no less pernicious, than the depreciating system, which preceded. This ought, however, to be attributed to its proper cause, the former extent and degraded state of paper credit. In applying a remedy to an evil, so universally inveterate, this effect ought to be considered,

rather as the last malignant effort of the evil, than an indication of the unsuitableness of the remedy.

The wisdom, justice, and equality of the laws enacted under the federal government, and consequently the beneficial influence of its principles, are strongly evinced by the prompt observance of a free and enlightened people. Compared with the extent and variety of transactions, which, since the adoption of this government, have employed every class of citizens, the courts of the Union have in few instances, been called to animadvert on a breach of its laws.

The experience, which we have already had, is sufficient to found a confidence, not only in the efficiency of the federal government; but in the coincidence of its principles, with the laws of civil and social nature, and the present state of manners and knowlege.

SECTION IV.

Observations on the Tendency in Government to a Corruption of its Principles, Degeneracy, and Dissolution.—Plan of Reformation incorporated in the Federal Government.—Probable Effect in perpetuating the Government.

MONTESQUIEU, speaking of that kind of government, which was established through Europe, by the conquerors of the Roman empire, says, "It was a good government, that had in itself a capacity of growing better."* This capacity of growing better, was not the effect of any direct intention of the founders, nor, if perceived, was it ever pursued. Accordingly we have seen this kind of government, almost universally, degenerating into a species of despotism. If any government have admitted improvements, these improvements have never been deliberately made, in consequence of any fixed plan of reformation adopted in the constitution. They have been constantly introduced by violence, or in a concurrence of circumstances, little if at all intended or foreseen.

A a 3

Not-

*Sp. L. B. ix. Ch. 8. in the note.

Notwithstanding the foregoing observation of Montesquieu, he appears to join in an opinion, which has very generally prevailed, that governments, like men, from a necessity of nature, carry in themselves, from their very origin, the seeds of dissolution; that man is fatally incapable of forming any system, which shall endure without degenerating. This opinion seems to be countenanced by the experience of ages. I am apprehensive, however, that on enquiry, we shall find reason for a different opinion. A more general development of the laws of human nature, may discover, that, though in the infancy of mankind, from which, perhaps those nations, who have made the greatest advances, have hardly emerged, this may be true; yet man is, by nature, capable of improvements, which may render an amelioration in government as easy and familiar as in any science. The same fate has attended all sciences of more difficult investigation. Their establishment and improvement have generally been attempted by reasonings *a priori*, in which imagination is the principal agent. It has fared in the same manner with the various systems of natural philosophy, morality, and theology, which have succeeded each other in the world.

Within

Within little more than a century, experimental reasonings have banished almost innumerable absurdities, and in many sciences, seem to have laid a foundation of knowlege, as fixed and as durable, as the course of nature. It is at length perceived, that the operations of nature are subjected to certain laws, established by Deity, in the constitution of things; and, that nothing can be durable, which is calculated to thwart those laws, or divert them from their course. Man, and all the works of man, no less than inert matter, are subjected to those laws. States, kingdoms and empires, if they admit principles, which thwart the established laws of nature, like heaps of sand, opposed to the resistless force of a torrent, are inevitably swept into the gulf of dissolution.

The laws of nature, we have before observed, are immutable; not so the relations, from which they result; or the particular situations, in which those laws were designed to operate. This may need some illustration.

Matter is found existing, under modifications infinitely various, and is denominated of different kinds. Different kinds of matter, endued with what we call different powers, are found to have certain relations to each other, as well in the more simple, as in the

more

more intricate and comprehensive combinations. In all the variety of ways, in which they may be combined, each particular combination, invariably produces the same particular effect. If the combination be changed, the relations are changed. It comes under a different law, and a different effect is produced. All kinds of inert matter are incapable, from any internal power, which they possess, of changing their combination, or of altering the present existing relations. If any change or alteration be made, it must arise from something external. Hence, in the natural world, the course of effects is uniform, because the relations and situations of themselves continue uniform. In the moral world it is different. Man has both active and passive powers; both intelligence and volition to direct their operations. He is capable of changing the relative situation of things, both in respect to himself, and in respect to the different kinds of matter, which are subjected to his operations. Hence the relative situation, being less uniform, effects and events, both natural and moral, as they relate to him, will be less uniform. The relations of matter, and the laws of its operation, are, to the material agents, irresistible; not so the laws of moral action. The laws of moral action respect the design of the agent

agent, in connexion with the means and the end, both general and particular. The laws of matter have no respect to the design of the material agents. The one is obligatory, and precedes the action : the other is necessary, and accompanies the operation.

For these, among other reasons, the laws of moral agents, by which their actions are produced and governed, and the events, which respect them, directed, are not so easily understood, or so fully comprehended, as the laws of matter.

To an omniscient Being, indeed, the former are as perfectly intelligible as the latter. We know likewise, that men are capable of acquiring much knowlege on the subject, and that some of more comprehensive minds, and closer observation, are capable of tracing the laws of human actions, even in many very intricate combinations, and of calculating upon their general operations, in given situations, with no inconsiderable degree of certainty. This is, indeed, the only solid foundation of political science. Political and civil laws are designed to regulate the future actions of men, as they arise in society, and to produce such relations, as are dictated by the laws of social nature. Knowlege equal to this task is the result, only of accumulated experience. But a necessity for civil in-

situ-

stitutions arises antecedent to experience. Civil institutions have generally been the rude productions of necessity, and the form originally imposed by fraud, violence, or what, to men, are the mere suggestions of chance. Men have commonly regarded only some of the most obvious, the most predominant, existing relations, with little knowledge of the change in the present relations, which would be the necessary effect of their institutions, or of the future improvement of the species. Indeed, could every individual in society, have an intuitive prescience of the changes, as they were to arise, in their order, it would still, perhaps, be impossible to form any human institution, which should accommodate itself to every situation in the progress. Interest, with some, an habitual veneration for ancient establishments, with all, an opinion of the present perfection of government, and a dread of encouraging a spirit of innovation, the bane of a well regulated society, have concurred to prevent any regular plan of fundamental reformation in government, and to continue, as unalterably perfect, those institutions, which were adapted only to the weakness, ignorance, and barbarous manners of an infant people.

By the force of habit, and inveterate national prejudices, abuses are rendered sacred

sacred, and not unfrequently, come to be considered as rightful privileges; and those institutions, which were the offspring of chance or violence, to be extolled as the most perfect productions of reason, founded in the original and unalterable principles of nature. Such was the British government, and such has been the force of habitual prejudice upon the people of that kingdom. That government has, indeed, received many improvements, with the improvements of the age; but they have generally been wrested by force from the reigning powers, or interposed in a revolution of the crown. Many respectable characters long considered them as so many violations of the most sacred rights. The greater part of the nation appear fully persuaded, that all farther improvements are impracticable, and that because their government was once the best, perhaps, which existed in the world, it must, through all the progressive advances in knowledge, in morals, and in manners, continue the best, a pattern of unchanging perfection, though, in its principles, it is much too limited for the present state. It is probable that all improvements in the government, will be opposed and prevented by those in power, who are interested in the present order of things, till the improvements of an

enlightened age, shall produce a violent concussion in the combat with ancient prejudices, and struggle through a scene of tumult, outrage, and perhaps civil war, to arrive at some inconsiderable amelioration, in their constitution.

In the progress of social improvements, there usually arises a repugnancy, between the principles of the government, and the present morals and manners of the people. Hence we may learn to account for the constant superiority, in most nations, of private to political morality, as practised by the same individuals. The principles of a government, adapted to the limited occasions of a simple and infant state of society, tend in opposition to the progress of improvement, or to divert it into partial and devious channels. This must have a very pernicious effect, as well upon the administration of the government, as upon the morals, habits, and manners of the people. From this source, principally, has proceeded that corruption in the administration of government, that degeneracy in the manners of the people, which has perpetually proved the ruin of the most celebrated civil institutions.

The confining of a people, who have arrived at a highly improved state of society, to the forms and principles of a government,

ernment, which originated in a simple, if not barbarous state of men and manners, may not unaptly be compared to a custom, which prevails among the Chinese. A small foot being reckoned the highest point of beauty, it is the universal practice with them, to confine the feet of their female infants, to prevent their growth. When arrived at maturity, the feet of the Chinese women, it is said, do not exceed in size those of an infant of six months old ; so that from the disproportion of those members to the weight of the body, they appear rather to totter than walk. No less awkwardness of situation, no less perversion of nature must take place, in a nation, where the improvement of its civil and political institutions are limited, and not suffered to proceed in any degree of equality with the general improvements of the people.

In this point, the constitution of the United States of America, is distinguished from all other national establishments. It is not pretended to have attained the achme of perfection, to the exclusion of future improvements. It is calculated to admit amendments, corresponding with the progress of the citizens in social improvements, and political science. The idea of incorporating, in the constitution itself, a plan

of reformation, which, without encouraging a spirit of innovation, the parent of anarchy and final despotism, might enable the people, with deliberation, and more mature experience, to correct what should be, at any time, found wrong in the form, principles, or operation of the government, was first adopted, in practice, in some of the individual states of the confederacy. It had been found, not only practicable and safe in the exercise, but its happy effect in ameliorating the fundamental principles of the government, had, in several instances, been fully evinced. This idea was taken up and pursued in framing the constitution of government for the United States. It is made a fundamental article of that constitution, that: "Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to the constitution, or on application of two thirds of the several states, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as parts of the constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one, or the other mode of ratification may be proposed by Congress." There are some restrictions on the power of making amend-

amendments. Among other things it is provided, that no state shall, without its consent, be deprived of its equal suffrage in the senate.

In virtue of the power vested in Congress, and reserved to the people and the states, by this article, several important amendments have already been adopted in the federal constitution; and we have reason to believe, that whatever, on experience, shall be found deficient in principle, will be added; whatever shall be found dangerous to the rights of the people or the states, or impracticable in operation, will be retrenched and corrected. The wisdom, which formed it, aided and matured by experience, may, not only extend its principles, with the progress of social improvements, but carry it to a greater degree of practical perfection than any thing, which has yet been known in government.

Let us not, then, rashly, or from the pride of a prophetic spirit, conclude that this beautiful system is, with the crazy empires of antiquity, destined to a speedy dissolution; or that it must in time, thro' the degeneracy of the people, and a corruption of its principles, of necessity give place to a system of remediless tyranny and oppression. Let us rather, while we con-
ceive

ceive a rational hope, that it will endure as long as the successive generations of men, attend, with the calmness of philosophy, and the persevering zeal of patriotism, to the enjoyment of its blessings, and the improvement of its principles. To an ardent wish for its perpetual duration, let us add the only means of securing it. Let us endeavor to diffuse, extensively, the principles of useful knowledge, and to impress, indelibly, on the minds of the rising generation, the sentiments of liberal virtue, and genuine patriotism.

6 AP 53

THE END.

